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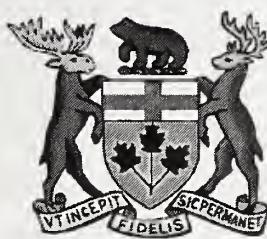


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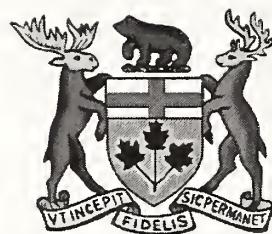
# SECOND ANNUAL REPORT

2008

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JUSTICES OF THE PEACE  
REVIEW COUNCIL

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JUSTICES OF THE PEACE  
REVIEW COUNCIL

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*The Honourable Annemarie E. Bonkalo*

**CHIEF JUSTICE  
ONTARIO COURT OF JUSTICE**

Chair, Justices of the Peace Review Council



JUSTICES OF THE PEACE REVIEW COUNCIL

March 31, 2010

The Honourable Chris Bentley  
Attorney General for the Province of Ontario  
720 Bay Street, 11th Floor  
Toronto, Ontario  
M5G 2K1

Dear Minister:

It is my pleasure to submit the second Annual Report of the Justices of the Peace Review Council concerning its operations throughout 2008, in accordance with subsection 9(7) of the *Justices of the Peace Act*. The period of time covered by this Annual Report is from January 1, 2008 to December 31, 2008.

Respectfully submitted,

A handwritten signature in black ink that reads "Annemarie E. Bonkalo".

Annemarie E. Bonkalo  
*Chief Justice*  
*Ontario Court of Justice*



## INTRODUCTION

The period of time covered by this Annual Report is from January 1, 2008 to December 31, 2008. This report is the second Annual Report on the work of the Justices of the Peace Review Council.

Justices of the peace play an important role in the administration of justice in Ontario. They are appointed by the Province of Ontario and have their duties assigned by a Regional Senior Justice or a Regional Senior Justice of the Peace. They routinely conduct trials under the *Provincial Offences Act* and preside over bail hearings. They also perform a number of judicial functions, such as issuing search warrants. Justices of the peace do difficult, important work in the justice system. A justice of the peace may be the only judicial officer a citizen will encounter in his or her lifetime.

The Justices of the Peace Review Council is a Council established by the Province of Ontario under the *Justices of the Peace Act* with a mandate to receive and investigate complaints against justices of the peace and to fulfill other functions as described in this report. The Review Council does not have the power to interfere with or change a decision made by a justice of the peace. Those are matters to be pursued through other legal remedies.

The Justices of the Peace Review Council was in existence prior to 2008. However, effective January 1, 2007, the *Access to Justice Act*, 2006 amended the *Justices of the Peace Act* to make changes to the composition, procedures and mandate of the Council. The current legislation provides for the Council to make an Annual Report to the Attorney General on its affairs including case summaries. The report may not include information that identifies a justice of the peace, a complainant or a witness unless a public inquiry or public hearing has occurred.

This Second Annual Report of the Justices of the Peace Review Council provides information on membership on the Council, on the mandate of the Council and on cases closed during 2008. During the year, there were cases addressed under the former *Justices of the Peace Act* as it read prior to the changes enacted by the *Access to Justice Act*, and under the current legislation. The Annual Report includes information on the procedures used to address complaints filed under and governed by the former Act, as well as complaints filed and addressed under the current procedures.

The Justices of the Peace Review Council had jurisdiction over approximately 381 provincially-appointed justices of the peace, full-time and part-time and *per diem*, during the period of time covered by this Annual Report.



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# **SECOND JUSTICES OF THE PEACE REVIEW COUNCIL ANNUAL REPORT**

2008

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## **1. Composition and Terms of Appointment**

The Justices of the Peace Review Council includes judges, justices of the peace, a lawyer and four community representatives:

- ◆ the Chief Justice of the Ontario Court of Justice, or another judge of the Ontario Court of Justice designated by the Chief Justice;
- ◆ the Associate Chief Justice Co-ordinator of Justices of the Peace;
- ◆ three justices of the peace appointed by the Chief Justice of the Ontario Court of Justice;
- ◆ two judges of the Ontario Court of Justice appointed by the Chief Justice of the Ontario Court of Justice;
- ◆ one regional senior justice of the peace appointed by the Chief Justice of the Ontario Court of Justice;
- ◆ a lawyer appointed by the Attorney General from a list of three names submitted to the Attorney General by the Law Society of Upper Canada;
- ◆ four persons appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General.

In the appointment of community members, the importance is recognized of reflecting, in the composition of the Review Council as a whole, Ontario's linguistic duality and the diversity of its population and ensuring overall gender balance.

To provide for staggered terms among members of the Council, initially one lawyer and one community person hold a six-year term, one community person holds a two-year term and the remaining two community members hold a four-year term. After those members complete their terms, lawyer and community members who are appointed to the Council will hold office for four-year terms and will be eligible for reappointment. Judicial members on the Council are appointed by the Chief Justice of the Ontario Court of Justice.

## **2. Members – Regular**

The membership of the Review Council in the year covered by this report (January 1, 2008 to December 31, 2008) was as follows:

### ***Judicial Members:***

#### **CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE**

The Honourable Annemarie E. Bonkalo ..... (Toronto)

#### **ASSOCIATE CHIEF JUSTICE CO-ORDINATOR OF JUSTICES OF THE PEACE OF THE ONTARIO COURT OF JUSTICE**

The Honourable John A. Payne ..... (Durham/Toronto)

### ***Three Justices of the Peace Appointed by the Chief Justice of the Ontario Court of Justice:***

His Worship Dan M. MacDonald ..... (Brantford)

Her Worship Cornelia Mews ..... (Newmarket/Toronto)  
(Her Worship was a member in her capacity as Regional Senior Justice of the Peace until August 1, 2008. Following her appointment as Senior Justice of the Peace, she was re-appointed as a justice of the peace member, effective September 1, 2008.)

Her Worship Lorraine A. Watson ..... (Kingston)

### ***Two Judges of the Ontario Court of Justice Appointed by the Chief Justice of the Ontario Court of Justice:***

The Honourable Justice Ralph E. W. Carr ..... (Timmins)

The Honourable Justice Deborah K. Livingstone ..... (London)



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## **Regional Senior Justice of the Peace Appointed by the Chief Justice of the Ontario Court of Justice:**

Her Worship Kathleen M. Bryant.....(Sault Ste. Marie)  
(Her Worship was a justice of the peace member until August 31, 2008 and was reappointed as the Regional Senior Justice of the Peace member, effective September 1, 2008.)

### **Lawyer Member:**

Ms. S. Margot Blight.....(Toronto)  
Borden Ladner Gervais LLP

### **Community Member:**

Mr. Emir Aly Crowne-Mohammed.....(Windsor)  
Professor, Faculty of Law, University of Windsor

Ms. Cherie A. Daniel.....(Toronto)  
Lawyer

Dr. Michael S. Phillips.....(Gormley)  
Consultant, Mental Health and Justice

Mr. Steven G. Silver.....(Gananoque)  
Chief Administrative Officer, United  
Counties of Leeds & Grenville

### **Members – Temporary:**

Subsection 8(10) of the *Justices of the Peace Act* permits the Chief Justice of the Ontario Court of Justice to appoint a judge or a justice of the peace to be a temporary member of the Justices of the Peace Review Council of a complaints committee or hearing panel where it is necessary in order to meet the requirements of the *Act*. During the period covered by this report, the following temporary members were appointed to serve as temporary members:

The Honourable Justice Guy F. DeMarco.....(Windsor)

His Worship Maurice Hudson.....(Brampton)

Her Worship Louise E. Rozon.....(Cornwall)

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## **3. Administrative Information**

Separate office space adjacent to the Office of the Chief Justice in downtown Toronto is utilized by both the Ontario Judicial Council and the Justices of the Peace Review Council. The proximity of the Councils' office to the Office of the Chief Justice permits both Councils to make use of clerical and administrative staff, as needed, and computer systems and support backup without the need of acquiring a large support staff.

Councils' offices are used primarily for meetings of both Councils and their members. Each Council has a phone and fax number and its own stationery. Each has a toll-free number for the use of members of the public across the province of Ontario and a toll-free number for persons using TTY/teletypewriter machines.

During the period covered by this report, the staff of the Ontario Judicial Council and the Justices of the Peace Review Council consisted of a registrar, two assistant registrars and a secretary:

Ms. Marilyn E. King, LL.B. – Registrar  
Mr. Thomas A. Glassford – Assistant Registrar  
Ms. Ana M. Brigido – Assistant Registrar  
Ms. Jacqueline Okumu – Acting Secretary

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## **4. Functions of the Review Council**

The *Justices of the Peace Act* provides that the functions of the Review Council are:

- ◆ to consider applications under section 5.2 for the accommodation of needs;
- ◆ to establish complaints committees from amongst its members to receive and investigate complaints against justices of the peace, and decide upon dispositions under section 11(15);
- ◆ to hold hearings under section 11.1 when hearings are ordered by complaints committees pursuant to section 11(15);
- ◆ to review and approve standards of conduct;

- to deal with continuing education plans; and,
- to decide whether a justice of the peace who applies for approval to engage in other remunerative work may do so.

The Review Council does not have the power to interfere with or change a decision made by a justice of the peace. If a person believes that a justice of the peace made an error in assessing evidence or in making a decision on any of the issues, the proper way to proceed is through other legal remedies, such as an appeal.

During the period covered by this Report, the Council continued to refine and develop its procedures, approved revisions to the education plan and, in conjunction with the Ontario Judicial Council, developed a new joint brochure about the complaint process for member of the public.

A copy of the procedures that were established and approved in 2008 is included as Appendix F. The most recent version of the Council's procedures is posted on the Review Council's website.

A court decision<sup>1</sup> was issued in 2008 that extended the mandatory retirement age for justices of the peace to age 75, the same as the retirement age for judges. On November 28, 2008, the Council approved provisions and criteria to allow for the continuation in office of justices of the peace until age 75.

The Council also decided upon how the public will be notified when a public hearing is ordered under section 11(15) (c) of the *Justices of the Peace Act*. When a hearing is ordered into complaints against a justice of the peace, a Notice of Hearing will be published in the local newspaper in the city or town in which the justice of the peace presides. The Notice will also be published in the Ontario Reports. As well, the Notice will be posted on the Council's website, and updates will be posted on the website to inform the public of the status and outcome of the hearing.

One Notice of Hearing was posted during 2008. The Notice is included at Appendix J of this report.

## 5. Education Plan

The Associate Chief Justice Co-ordinator of Justices of the Peace of the Ontario Court of Justice is required, by section 14 of the *Justices of the Peace Act*, to implement, and make public, a plan for the continuing judicial education of justices of the peace. The education plan must be approved by the Justices of the Peace Review Council. During the period of time covered by this Annual Report, a continuing education plan was developed by the Associate Chief Justice Co-ordinator of Justices of the Peace in conjunction with the Advisory Committee on Education. The Committee includes the Associate Chief Justice Co-ordinator of Justices of the Peace as Chair (*ex officio*) and justices of the peace nominated by the Associate Chief Justice and by the Association of Justices of the Peace of Ontario. The continuing education plan was approved by the Justices of the Peace Review Council on November 28, 2008. A copy of the continuing education plan can be found at Appendix "A" in this report.

## 6. Standards of Conduct

The Associate Chief Justice Co-ordinator of Justices of the Peace may, under section 13(1) of the *Justices of the Peace Act* establish standards of conduct for justices of the peace and he/she implements the standards when they have been reviewed and approved by the Review Council.

Principles of judicial office set out standards of excellence and integrity to which all justices of the peace subscribe. These principles are not exhaustive. They are designed to be advisory in nature and are not directly related to any specific disciplinary process.

Intended to assist justices of the peace in addressing ethical and professional dilemmas, they may also serve in assisting the public to understand the reasonable expectations which the public may have of justices of the peace in the performance of judicial duties and in the conduct of their personal lives. The principles were approved by the Justices of the Peace Review Council on December 7,

<sup>1</sup> *Association of Justices of the Peace of Ontario, Brenna Brown, Moreland Lynn and Meena Nadkarni v. Attorney General of Ontario* (2008) CanLII 26258 (ON S.C.) 92 O.R. (3d) 16; 292 D.L.R. (4th) 623; 67 C.C.E.L. (3d) 56; 173 C.R.R. (2d) 1

2007. A copy of the Principles of Judicial Office can be found at Appendix "B" in this report.

## 7. Other Remunerative Work

In 1997, the Justices of the Peace Review Council approved a policy regarding extra-remunerative work. On November 23, 2007, the newly constituted Review Council approved the current policy regarding other remunerative work in which justices of the peace may engage. Under section 19 of the *Justices of the Peace Act*, all justices of the peace are required to seek the written approval of the Review Council before accepting or engaging in any extra-remunerative work. Applications received from justices of the peace to engage in other remunerative work are considered in accordance with the policy. The policy applies to all justices of the peace, full-time and part-time and *per diem*.

The policy sets out criteria that are used by the Review Panel in assessing applications:

- ◆ whether there is an actual, or perceived, conflict of interest between the duties as assigned and the extra-remunerative activity for which approval is sought;
- ◆ whether the nature of the activity for which the justice of the peace seeks approval will present an intrusive demand on the time, availability or energy of the justice of the peace and his or her ability to properly perform the judicial duties assigned; and,
- ◆ whether the activity for which the justice of the peace seeks approval is a seemly or appropriate activity in which a judicial officer should engage, having regard to the public perceptions of judicial demeanour, independence and impartiality.

A copy of the policy that was in effect during 2008 can be found at Appendix "C". The most recent version of the policy is posted on the Review Council's website.

In 2008, the Review Council received and considered two applications for approval to engage in extra-remunerative work. The applications were approved. Information on the applications can be found at Appendix "C" following the policy.

## 8. Communications

The website of the Justices of the Peace Review Council includes information on the Council, as well as information about ongoing or upcoming hearings. Copies of "Judicial Inquiry Proceedings" held under the former legislation and "Reasons for Decision" from any public hearings are posted on the website when released. Each Annual Report of the Council will be available in its entirety on the website after it has been tabled in the legislature by the Attorney General.

The address of the JPRC website is:  
[www.ontariocourts.on.ca/jprc/](http://www.ontariocourts.on.ca/jprc/).

In 2008, the Council worked collaboratively with the Ontario Judicial Council to develop a joint brochure to inform the public about the process to make complaints about judges and justices of the peace. The joint brochure, "*Do You Have a Complaint?*" provides information on what a justice of the peace does, on how to tell whether the presiding judicial officer is a judge or a justice of the peace, and on how to make a complaint. The brochure is posted on the Council's website. A copy of the information contained in the brochure is included in Appendix "D" of this report.

## 9. Complaints Procedure

Any person may make a complaint to the Review Council about the conduct of a justice of the peace. Complaints must be made in writing and signed by the complainant. The governing legislation and the principles of natural justice do not provide for the Review Council to act on anonymous complaints or to initiate inquiries into the conduct of a judicial officer. Rather, an investigation conducted by the Review Council must be in response to specific allegations submitted by a complainant. Most of the complaints received by the Justices of the Peace Review Council are received from members of the public. All correspondence is reviewed to determine whether or not a complaint is within the jurisdiction of the Review Council. If an individual is actually complaining about his/her lawyer or a Crown Attorney, or another office, the complainant is referred to the appropriate agency or authorities.

In those cases where the complaint is within the jurisdiction of the Review Council, a complaint file is opened and a letter of acknowledgement is sent to the complainant, usually within a week of his or her letter being received by the Review Council. If the complainant expresses dissatisfaction with a decision that has been made, the letter of acknowledgement advises the complainant that the Review Council has no power to change a decision made by a justice of the peace. In such cases, the complainant is advised that he or she may wish to consult legal counsel to determine what, if any, remedies may be available.

As a result of the *Access to Justice Act*, 2006, amendments of the *Justices of the Peace Act* came into effect on January 1, 2007 that provide the current framework for addressing complaints against justices of the peace.

The legislation provides for transition from the former *Justices of the Peace Act* to the new *Act*. Under section 11.1(22), for a small number of existing complaints that were made before January 1, 2007 and that were considered by the former Review Council before that date, the procedures under the former legislation related to section 11 investigative hearings and to section 12 public inquiries continued to apply.

Information is provided below on the procedures of the Review Council for complaints filed prior to the amendments to the *Justices of the Peace Act* that resulted from the *Access to Justice Act*, and on the current procedures for complaints governed by the new legislation.

## 9.1. Complaints Addressed Under Former Legislation

For outstanding complaints addressed under the provisions of the former legislation, the new Review Council took steps to replicate, as much as possible, the procedure of the former legislation. A more detailed description of the Review Council's procedures for complaints addressed under the former legislation can be found at Appendix "E" of this Report.

### ***Investigation and Review of Complaints***

Under the former *Justices of the Peace Act*, four of the six members on the Review Council constituted a quorum and were sufficient for the exercise of all of the jurisdiction and powers of the Review Council. For complaints governed by the former legislative sections, investigation was carried out and each case was considered by four members of the newly established Review Council.

Usually, a transcript of a court hearing was ordered and when deemed necessary, a copy of the audiotape may have also been ordered.

The Council reviewed the investigative materials. Pursuant to section 11(1), the Review Council determined whether or not further investigation was needed prior to making a decision. In some cases, the Council may have decided to retain external counsel to conduct further investigation such as interviewing witnesses. The justice of the peace may also have been asked by the Council for a response to the concerns raised by the complaint. If a response was requested from the justice of the peace, a copy of the complaint, the transcript (if any) and all the relevant materials on file were provided to the justice of the peace, together with the letter from the Review Council requesting the response.

### ***Dismissals or Referrals***

Cases were dismissed if the complainant's allegations were determined to be unfounded or outside of the mandate of the Review Council. For example, if a complaint was a disagreement with a decision, that would be a matter that would need to be considered by an appeal court and outside of the jurisdiction of the Review Council. In some cases, the complaint may have been referred to the Associate Chief Justice Co-ordinator of Justices of the Peace or to the Regional Senior Justice to speak to the justice of the peace.

If the Review Council determined that no further investigation was required and a complaint should be dismissed, the complainant was then notified of the Review Council's

disposition. The justice of the peace would also receive notice of the Review Council's disposition.

### **Section 11 Investigative Hearing**

Section 11.1(22) of the current *Justices of the Peace Act* provides that section 11 and section 12 of the former Act continue to apply for complaints made before January 1, 2007. Under section 11, the members of the Review Council had the authority to decide to conduct an investigative hearing as part of the investigation process. In those cases where the complaint was made before January 1, 2007 and where the Review Council ordered a section 11 investigative hearing, the Registrar engaged external legal counsel to prepare a "Notice of Hearing" which outlined the particulars of the complaint to be addressed by Council. The Notice was personally served on the justice of the peace. The external counsel presented the case to the Review Council. As the section 11 hearing was part of the investigation process, the same four members of the Review Council who investigated the case conducted the hearing.

A section 11 investigative hearing was held in private and was recorded. The justice of the peace was entitled to appear in person and to be represented by counsel. The Review Council had all the powers of a commission under Part II of the *Public Inquiries Act*.

At the conclusion of the hearing, the members of the Review Council determined whether or not to recommend to the Attorney General that a public inquiry should be held pursuant to section 12 of the former *Justices of the Peace Act*. If a public inquiry was recommended, a report was sent to the Attorney General recommending a public inquiry. The report may have also included a recommendation that the justice of the peace be compensated for all or part of his or her legal costs in connection with the investigation.

A copy of their report to the Attorney General was given to the justice of the peace. The person who made the complaint was informed of the disposition of the complaint, but was not given a copy of Council's report. The Attorney General has the authority to make all or part of the report public, if he or she is of the opinion that it is in the public interest to do so, but this has rarely been done.

### **Section 12 Public Inquiry**

Section 12 of the former Act provides that the Lieutenant Governor in Council may appoint a judge of the Ontario Court of Justice to conduct a public inquiry into the question of whether there has been misconduct by a justice of the peace, on the recommendation of the Review Council, following the conclusion of its investigation under section 11 of the former *Justices of the Peace Act*.

The *Public Inquiries Act* applies to "section 12 inquiries".

Following the completion of the public inquiry, the judge who conducts the inquiry prepares a report to the Lieutenant Governor in Council. Section 12 of the former *Justices of the Peace Act* states that the report of the inquiry held under section 12 (the "public inquiry") may recommend that the Lieutenant Governor in Council remove the justice of the peace from office in accordance with section 8 of the *Justices of the Peace Act* or it may recommend that the Justices of the Peace Review Council implement a disposition under subsection 12(3.3) of the *Act*. Alternatively, the judge who conducts the public inquiry may also determine that there was no misconduct by the justice of the peace and decide to "dismiss" the complaint at the conclusion of the inquiry.

The report of the public inquiry may also recommend that the justice of the peace be compensated for all or part of the cost of legal services incurred in connection with the inquiry. The amount of compensation recommended must be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services.

### **Removal from Office**

For complaints filed under the former legislation, a justice of the peace can only be removed from office by the Lieutenant Governor in Council and only if removal is recommended by the judge conducting the section 12 public inquiry. The judge must have concluded that the justice of the peace has become incapacitated or disabled from the due execution of his or her office by reason of infirmity, conduct that is incompatible with the execution of the duties of his or her office, or having failed to perform the duties of his or her office as assigned.

The order of removal must be laid before the Legislative Assembly, if it is in session or, if not, within fifteen days after the commencement of the next session.

### **Disposition by Review Council**

If, at the end of the section 12 public inquiry, the judge conducting the inquiry recommends that the Review Council implement a disposition under subsection 12(3.3) of the former *Justices of the Peace Act*, it is necessary for the members of the Review Council to reconvene and determine what disposition they think is appropriate in the circumstances.

In order to make this determination, the Review Council will conduct a meeting, which will be public, and will provide the justice of the peace with an opportunity to make submissions as to the appropriate disposition under subsection (3.3).

Under subsection (3.3) of section 12, the Review Council may:

- (a) warn the justice of the peace;
- (b) reprimand the justice of the peace;
- (c) order the justice of the peace to apologize to the complainant or to any other person;
- (d) order the justice of the peace to take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a justice of the peace;
- (e) suspend the justice of the peace with pay, for any period; or
- (f) suspend the justice of the peace without pay, but with benefits, for a period of up to 30 days.

When the Review Council has dealt with a complaint regarding a justice of the peace, the person who made the complaint and the justice of the peace are informed of the disposition of the complaint.

### **Former Legislation**

The applicable legislative provisions, as they were under the former *Justices of the Peace Act*, prior to the

amendments resulting from the *Access to Justice Act*, are included as Appendix "G" to this report.

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### **9.2 Current Complaints Process**

The *Justices of the Peace Act* and the procedures that have been established by the Review Council provide the current framework for addressing complaints against justices of the peace. The procedure is outlined below. A more detailed outline of the Justices of the Peace Review Council's current procedures is included as Appendix "F" to this report.

#### **Preliminary Investigation and Review**

As soon as possible after receiving a complaint about the conduct of a justice of the peace, the office of the Review Council will acknowledge receipt of the complaint and establish a complaints committee of the Review Council to investigate the complaint. Members of the Review Council serve on complaints committees on a rotating basis. Each complaints committee is composed of a provincially appointed judge who acts as chair, a justice of the peace and either a community member or a lawyer member. Complaints are not generally assigned to members from the same region where the justice of the peace who is the subject of the complaint presides. This avoids any risk of or perception of bias or conflict of interest between a member of Council and the justice of the peace.

Section 11(8) of the *Act* requires that investigations by the Review Council must be conducted in private.

Frequently a transcript of a court hearing is ordered to be considered by the members of the complaints committee. An audiotape, if available, may also be ordered and reviewed. In some cases, it is necessary to conduct further investigation in the form of interviewing witnesses. If so, an external counsel is retained on behalf of the Review Council to carry out the investigation.

The complaints committee will determine whether or not a response to the complaint is required from the justice of the peace in question. If a response is requested from



the justice of the peace, a copy of the complaint, the transcript (if any) and all of the relevant materials considered by the committee will be provided to the justice of the peace, together with the letter sent from the Review Council requesting a response. The justice of the peace may seek independent legal advice to provide assistance in responding to Council.

Section 11(15) of the *Justices of the Peace Act* gives the complaints committee the authority to dismiss a complaint after reviewing the complaint where, in the opinion of the committee, it is frivolous or an abuse of process; it falls outside the Review Council's jurisdiction because it is a complaint about the exercise of judicial discretion; it does not include an allegation of judicial misconduct; the allegation is unproven; or, the misconduct does not rise to the level of misconduct that requires further action on the part of the Review Council.

### **Interim Recommendations**

The complaints committee will consider whether the allegation(s) warrants making an interim recommendation pending the disposition of a complaint. Under section 11(11) of the *Act*, an interim recommendation for non-assignment or re-assignment may be made to a Regional Senior Justice. It is within the discretion of the Regional Senior Justice as to whether he or she may decide to act upon the recommendation.

The Review Council has approved the following criteria in their procedures to guide the complaints committee as to when an interim recommendation should be made:

- ◆ where the complaint arises out of a working relationship between the complainant and the justice of the peace and the complainant and the justice of the peace both work at the same court location;
- ◆ where allowing the justice of the peace to continue to preside would likely bring the administration of justice into disrepute;
- ◆ where the complaint is of sufficient seriousness that there are reasonable grounds for investigation by law enforcement agencies;
- ◆ where it is evident to the complaints committee that a justice of the peace is suffering from a mental

or physical impairment that cannot be remedied or reasonably accommodated.

Where a complaints committee proposes to recommend temporarily not assigning or re-assigning a justice of the peace, it may give the justice of the peace an opportunity to be heard on that issue in writing. Particulars of the factors upon which the complaints committee's recommendations are based are provided to the Regional Senior Judge to assist the Regional Senior Judge in making his or her decision, and to the justice of the peace to provide him or her with notice of the complaint and the complaints committee's recommendation.

### ***Dispositions of the Complaints Committee***

When the investigation is completed, pursuant to section 11(15) of the *Act*, the complaints committee will do one of the following:

- a) dismiss the complaint if it is frivolous, an abuse of process or outside the jurisdiction of the complaints committee;
- b) invite the justice of the peace to attend before the complaints committee to receive advice concerning the issues raised in the complaint or send the justice of the peace a letter of advice concerning the issues raised in the complaint, or both;
- c) order that a formal hearing into the complaint be held by a hearing panel; or,
- d) refer the complaint to the Chief Justice of the Ontario Court of Justice.

The complaints committee reports to the Review Council on its decision and, except where it orders a formal hearing, does not identify the complainant or the justice of the peace who is the subject of the complaint in its report.

Except for hearings ordered under section 11(15)(c) to consider complaints against specific justices of the peace, proceedings of the Review Council are not held in public. Investigations must be conducted in private under section 11(8) of the *Act*.

The Review Council informs the person who made the complaint and the justice of the peace of the decision

made. A justice of the peace may waive notice of the complaint if it is being dismissed and no response was requested by the Council. If the complaint is dismissed, brief reasons for the decision are provided.

The complaints committee may recommend to the Attorney General that the justice of the peace be compensated for all or part of his or her legal services in connection with the investigation. The amount of compensation recommended must be based on a rate of legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services.

### **Public Hearing Under section 11.1**

When the complaints committee orders a public hearing, under section 11.1(1) of the *Act*, the Chief Justice of the Ontario Court of Justice, who is also the Chair of the Review Council, establishes a three-member hearing panel from among the members of the Council, composed of: a provincially appointed judge who chairs the panel; a justice of the peace; and, a member who is a judge, a lawyer or a member of the public. Complaints committee members who participated in the investigation of the complaint do not participate in its review by a hearing panel.

By the end of the investigation and hearing process, all decisions regarding complaints made to the Justices of the Peace Council will have been considered and reviewed by a total of six members of Council – three members of the complaints committee and three members of the hearing panel.

Provisions for temporary members have been made to ensure that a quorum of members of the Council, who have not been involved in earlier stages of reviewing the complaint, is available to conduct a hearing into a complaint if a hearing has been ordered. The Chief Justice of the Ontario Court of Justice may appoint a judge or a justice of the peace who is not a member of the Review Council to be a temporary member of a hearing panel where necessary to form each quorum to meet the requirements of the *Act*.

The Review Council engages legal counsel for the purposes of preparing and presenting the case against the justice of the peace. The legal counsel engaged by the

Review Council operates independently of the Review Council. The duty of legal counsel engaged under this Part is not to seek a particular order against a justice of the peace, but to see that the complaint against the justice of the peace is evaluated fairly and dispassionately to the end of achieving a just result.

The justice of the peace has the right to be represented by counsel, or to act on his or her own behalf in any hearing under this procedure.

The *Statutory Powers Procedure Act*, with some exceptions, applies to hearings into complaints. The panel, on application at any time by presenting counsel or by the justice of the peace, may require any person, including a party, by summons, to give evidence on oath or affirmation at the hearing and to produce in evidence at the hearing any documents or things specified by the panel which are relevant to the subject matter of the hearing and admissible at the hearing.

The question of compensation of the justice of the peace's costs incurred for legal services in the investigation and/or hearing of a complaint may be considered by the complaints committee or the hearing panel. They may recommend that the justice of the peace be compensated for all or part of the cost of legal services based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services.

### **Public or Private Hearing**

A section 11.1 hearing into a complaint is public unless the Review Council determines, in accordance with criteria established under the *Statutory Powers Procedure Act*, that matters involving public security may be disclosed; or, intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure of such matters, in the interests of any person affected or in the public interest, outweighs the desirability of following the principle that the hearing be open to the public.

In certain circumstances where a complaint involves allegations of sexual misconduct or sexual harassment,

the Council also has the power to prohibit publication of information that would disclose the identity of a complainant or a witness who testifies to having been the victim of the conduct. If a complaint involves allegations of sexual misconduct or sexual harassment, the hearing panel will, at the request of the complainant or of a witness who testifies to having been the victim of such conduct by the justice of the peace, prohibit the publication of information that might identify the complainant or the witness, as the case may be.

### ***Dispositions after section 11.1 Hearing***

After hearing the evidence, under section 11.1(10) of the *Justices of the Peace Act*, the hearing panel of the Council may dismiss the complaint, with or without a finding that it is unfounded or, if it upholds the complaint, it may decide upon any one of the following sanctions singly or in combination:

- ◆ warn the justice of the peace;
- ◆ reprimand the justice of the peace;
- ◆ order the justice of the peace to apologize to the complainant or to any other person;
- ◆ order the justice of the peace to take specified measures such as receiving education or treatment, as a condition of continuing to sit as a justice of the peace;
- ◆ suspend the justice of the peace with pay, for any period; or,
- ◆ suspend the justice of the peace without pay, but with benefits, for a period up to 30 days.

### ***Removal From Office***

Following the hearing, the Review Council may make a recommendation to the Attorney General that the justice of the peace be removed from office. This sanction stands alone and cannot be combined with any other sanction. A justice of the peace may be removed from office only if a hearing panel of the Review Council, after a hearing under section 11.1, recommends to the Attorney General under section 11.2 that the justice of the peace be removed on the ground of:

- ◆ he or she has become incapacitated or disabled from the execution of his or her office by reason of inability to perform the essential duties of the office because of a disability and, in the circumstances, accommodation of his or her needs would not remedy the inability, or could not be made because it would impose undue hardship to meet those needs;
- ◆ conduct that is incompatible with the execution of the office; or
- ◆ failure to perform the duties of his or her office.

Only the Lieutenant Governor in Council may act upon the recommendation and remove the justice of the peace from office.

### ***Notification of Disposition***

The Review Council communicates its decision to the person who made the complaint and to the justice of the peace. A justice of the peace may waive notice of the complaint if it is being dismissed and no response was requested by the Council. In accordance with the Procedures of the Review Council, if the Review Council decides to dismiss the complaint, it will provide brief reasons.

### ***Legislation***

The legislative provisions of the *Justices of the Peace Act* concerning the Justices of the Peace Review Council are included as Appendix "H" to this report.

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## **10. Summary of Complaints**

The Justices of the Peace Review Council carried forward 39 complaints to 2008 from previous years. Of those, two files were ongoing investigations of complaints being investigated under the former legislation. Eight complaints had previously been reported to the Attorney General with recommendations that a public inquiry should proceed pursuant to section 12 of the former legislation.

During 2008, 37 new complaint files were opened with the Review Council. The total number of files open during

2008 was 76. Of the 76 open files in 2008, 37 files were completed and closed before December 31, 2008, including 8 that were opened in 2008.

Thirty-nine complaints were carried over into 2009. Of the 39 files carried over into 2009, 29 were from 2008, and 10 were from previous years, including 6 complaints that the Review Council had previously reported to the Attorney General under section 11(7) of the former *Justices of the Peace Act* with recommendations that public inquiries be held under section 12 of the Act to inquire into the question of whether there had been misconduct. Of the 39 files carried over, 3 complaints were the subject of a public hearing under section 11.1 that commenced in 2008 but did not finish before the end of the year.

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## 10.1 Complaints Addressed Under Former Legislation

Under section 11.1(22), if a complaint was filed before January 1, 2007, and was considered at a meeting of the former Review Council, two sections of the former *Justices of the Peace Act* prior to the amendments resulting from the *Access to Justice Act* in 2006 still apply: investigations under section 11 and inquiries under section 12.

A quorum of at least four members of the Review Council reviewed and investigated each complaint. In each case the members reviewed the complainant's letter and, where necessary, reviewed the transcript and/or the audiotape of the proceedings that took place in court in order to make a fully informed decision about a complaint. In some instances, further investigation was conducted where warranted.

In 2008, 3 complaints that were closed in 2008 were complaints that were filed and addressed under the former legislation. In one case, File 15-012/04, a private or *in camera* investigatory hearing was ordered under section 11. However, the justice of the peace retired prior to the commencement of the hearing, due to illness. As a result, the Review Council lost jurisdiction over the complaint and the file was closed. A case summary is included in the next section of this report.

One public inquiry was conducted under section 12 of the former *Justices of the Peace Act* in relation to 2 complaints regarding conduct of His Worship Benjamin Sinai that were filed and addressed under that Act. One of the complaints arose from in-court conduct. One complaint arose from out-of-court conduct. The Commissioner who conducted the public inquiry determined that the conduct, considered separately and cumulatively, was incompatible with the due execution of the duties of the office of the justice of the peace, and brought the administration of justice into disrepute. The Commissioner recommended to the Attorney General that Justice of the Peace Sinai be removed from office in accordance with s. 8 of the former *Justices of the Peace Act*. A copy of the Judicial Inquiry Report is included at Appendix 1 in this Report.

An application for judicial review was subsequently brought by former justice of the peace Sinai. The application was still pending before the courts when this Annual Report was written.

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## 10.2 Complaints Addressed Under Current Legislation

An investigation was conducted in all cases by a complaints committee of Council, which was composed of a provincial judge, a justice of the peace and either a lawyer or community member. In each case, the complaints committee reviewed the complainant's letter and, where necessary, reviewed the transcript and/or the audiotape of the proceedings that took place in court in order to make a fully informed decision about a complaint. In some instances, further investigation was conducted where warranted.

At the conclusion of its investigation, the complaints committee decided under section 11(15) to:

- ◆ dismiss the complaint if it was frivolous, an abuse of process or outside the jurisdiction of the complaints committee;
- ◆ invite the justice of the peace to attend before the complaints committee to receive advice concerning the issues raised in the complaint or send the

justice of the peace a letter of advice concerning the issues raised in the complaint, or both;

- ◆ order that a formal hearing into the complaint be held by a hearing panel; or,
- ◆ refer the complaint to the Chief Justice of the Ontario Court of Justice.

The complaints committee reported its decision to the Review Council. Neither the complainant nor the justice of the peace who was the subject of the complaint were identified to the Review Council except where a formal hearing was ordered.

Of the 34 complaint files addressed under the new legislation and closed in 2008, 4 were dismissed by the Review Council under section 11(15)(a) on the basis that they were found to be outside the jurisdiction of the Council. These files typically involved a complainant who expressed dissatisfaction with the result of a trial or with a justice of the peace's decision, but who made no allegation of misconduct. While the decisions made by the justice of the peace in these cases could be the subject of other remedies, such as an appeal, the absence of any alleged misconduct meant that the complaints were outside the jurisdiction of the Review Council.

Twenty-five complaint files were dismissed by the Review Council under section 11(15)(a) after they were investigated by a complaints committee and determined to be unsubstantiated or unfounded. These complaints included allegations of judicial misconduct such as improper behaviour (rudeness, belligerence, etc.), lack of impartiality, conflict of interest or some other form of bias.

In 5 cases, the Review Council provided advice to justice of the peaces under section 11(15)(b). In one case, a justice of the peace was sent a letter of advice concerning issues raised in the complaints, and in 4 cases the justices of the peace attended before the complaints committee to receive advice concerning the issues raised in the complaints.

No complaints were referred to the Chief Justice of the Ontario Court of Justice during 2008. One public

hearing was ordered. The public Notice of Hearing is included at Appendix J.

Of the 34 complaints that were filed, addressed and closed under the current legislation, 18 arose from events during provincial offences proceedings, 8 arose from matters in Intake Court, and 8 arose from proceedings under the Criminal Code (5 from bail court, 1 from set-date court, 2 from pre-enquêtes).

Case summaries for each complaint follow in the next section of this Report.

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## 11. Case Summaries

In all cases that were closed during the year, notice of the Justice of the Peace Review Council's decision, with brief reasons, was given to the complainant and to the particular justice of the peace. In cases where the complaint was dismissed, a justice of the peace had the option to waive notice of the complaint if no response was requested by the Council.

Files are given a two-digit prefix indicating the complaint year, followed by a sequential file number and by two digits indicating the calendar year in which the file was opened (i.e. file no. 19-001/08 was the first file opened in the 19th complaint year and was opened in calendar year 2008).

Details of each complaint, with identifying information removed as required by the legislation, follow.

One public hearing commenced under section 11.1 of the *Justices of the Peace Act* during the period covered by this report. A copy of the Notice of Hearing that was publicly posted is included in Appendix J.

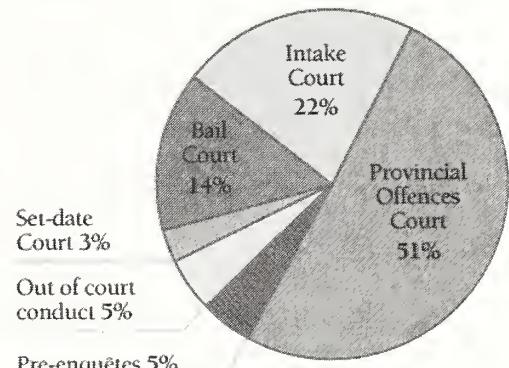
When a hearing is ongoing, updates on the status of the case are posted on the Review Council's website. At the end of a hearing, the decision can be found on the website under the link "Public Hearings Decisions".

## Summary of Complaints Closed in 2008

YEAR	2008
Cases carried into 2008	39
Complaint files opened	37
Total files open during the year	76
Total files closed during the year	37
<b>DISPOSITIONS UNDER FORMER LEGISLATION</b>	
Dismissed as out of jurisdiction	1
Recommendation for removal after section 12 public inquiry	2
<b>DISPOSITIONS UNDER CURRENT LEGISLATION</b>	
Dismissed as out of jurisdiction	4
Dismissed as not substantiated or did not amount to level of misconduct	25
Letters of advice or in-person meeting to receive advice	5
Cases continued into 2009	39

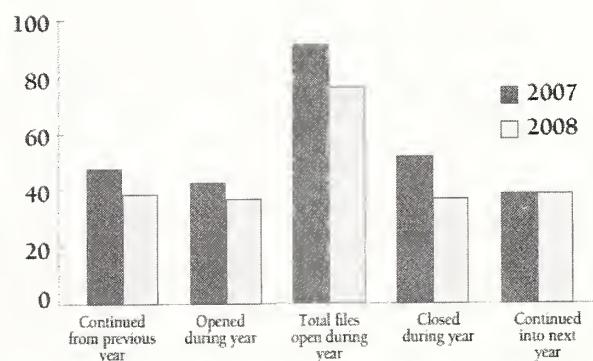
### Types of Cases Closed in 2008

TYPES OF CASES	
Provincial Offences Court	19
Intake Court	8
Bail Court	5
Set-date Court	1
Pre-enquêtes	2
Out of court conduct	2
<b>TOTAL</b>	<b>37</b>



### Caseload in Fiscal Years

FISCAL YEAR	2007	2008
Continued from previous year	48	39
Opened During Year	43	37
Total Files Open During Year	91	76
Closed During Year	52	37
Continued into Next Year	39	39



## CASE SUMMARIES

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### 2008 Case Summaries

#### CASE NO. 15-012/04

A judge submitted a letter of complaint alleging that the subject justice of the peace had sent a series of e-mails that represented, at the very least, inappropriate use of the justice e-mail system, and, at its worst, might amount to judicial misconduct. The Review Council reviewed the complaint and a series of e-mails provided with the complaint letter that were allegedly sent from the e-mail address at the justice of the peace's workplace to a government employee at another workplace e-mail address.

Investigation by the Review Council indicated that the subject justice of the peace had a friend with the same last name as the recipient of the inappropriate e-mails. They requested and received a response from the justice of the peace. The lawyer representing the subject justice of the peace advised that he had not sent the e-mails, that he did not recognize the names of the recipient, that the fact of the e-mails came as a shock to him, and that he had no knowledge of how the e-mails appeared to have been transmitted by him.

The Review Council directed that there be an in camera investigative hearing pursuant to section 11 of the former *Justices of the Peace Act*. Prior to the hearing date, the subject justice of the peace retired due to illness, resulting in the Review Council losing jurisdiction over the investigation.

On November 1, 2006 a *per diem* program for justices of the peace was instituted. The subject justice of the peace applied for and was appointed

on a *per diem* basis. This re-established jurisdiction of the Review Council over the complaint.

The Review Council again directed that there be an *in camera* investigative hearing pursuant to section 11 of the former *Justices of the Peace Act*. Before the hearing was held, the *Justices of the Peace Act* was amended by the *Access to Justice Act*, 2007. Under section 11.1(22) of the *Justices of the Peace Act*, as amended, a complaint made under the former legislation is to be dealt with in accordance with sections 11 and 12 of the former Act. A new hearing date was scheduled for the section 11 *in camera* investigative hearing to proceed. Prior to the hearing date, the subject justice of the peace retired on the basis of medical reasons. The complaint file was administratively closed due to lack of jurisdiction.

#### CASE NO. 17-035/06

The complainant was a police constable who filed a complaint against the justice of the peace presiding in Intake Court when he had attended to swear three informations. The complainant alleged that upon approaching the counter to sign in, he noticed His Worship "started waving his arms and shaking his head as I walked to the office window". The complainant indicated that "when it was my turn to attend the office, I walked into the room only to be met by a verbal barrage from (the) Justice of the Peace". The complainant alleged that His Worship was "visibly upset and in a raised tone of voice stated, 'You're lucky I'm not here full time cause I'd refuse to serve you.'" The complainant stated that His Worship's comments were unwarranted and unprofessional, and were heard by other officers who were waiting. The complainant indicated

## CASE SUMMARIES

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that he was not only embarrassed by the treatment he received; he was appalled by the tone and insinuation that the justice of the peace would ever 'refuse' to serve him. The complainant was further troubled that this incident may have been a "personal" attack on him, as the other officers that attended after him were not treated in the same manner.

There was no audiotape recording available for the complaints committee to review regarding this alleged incident. The complaints committee requested a response from the justice of the peace to the concerns raised by the complainant. In his response, His Worship did not 'disagree' that words were exchanged that day but denied that it was in a loud tone that could be heard by others outside the Intake Court. His Worship indicated that he had previously requested the complainant attend in the morning, as do all other police agencies. His Worship expressed regret that he may have been forceful and less than judicious in dealing with the complainant that day. His Worship wished to assure the complainant that he had no personal bias against him and that his ability to deal with him in an impartial and professional manner had not been compromised in any way.

After reviewing His Worship's response, the committee was of the view that the audiotape recording of this exchange, if it had been available, would have been a great benefit in evaluating this complaint, in setting the context of His Worship's response and in ultimately assisting the investigation and review of this matter. Despite the absence of the record, the complaints committee was of the opinion there

was some merit to the complaint and decided to provide His Worship with advice in writing as a suitable means of informing him that, however the alleged exchange took place, his conduct had raised concerns about His Worship's ability to remain impartial in future dealings with a member of the local police force. In this advice, the committee also strongly reminded His Worship of the importance of recording all attendances in the Intake Court for the benefit of everyone and for the administration of justice.

The complaints committee closed this file after providing the above advice to His Worship in writing.

### CASE NO. 17-056/07

The complainant received a parking violation for "parking unauthorized vehicle in handicapped space". He alleged that he had a valid handicap permit displayed. The complaint was filed against the presiding justice of the peace alleging that the trial was a farce and that there was a miscarriage of justice, and that the justice of the peace was eager to find him guilty of having a phoney permit without any evidence or proof.

The complaints committee reviewed the complainant's letter and requested and reviewed the transcript and audiotape of the trial proceeding in question. The complaints committee was of the view that the allegations against the trial justice of the peace were not supported by the transcript of record. In the committee's opinion, a proper trial was conducted and the complainant was afforded the opportunity to cross-examine the officer, provide testimony

## CASE SUMMARIES

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and call his witness. The complaints committee was of the view that there was no evidence of eagerness on the part of the presiding justice of the peace to find the accused guilty, as alleged. The committee noted that if the complainant was unhappy with the decision or felt an error in law was made, the appropriate remedy would have been to file an appeal.

The complaints committee dismissed the complaint for the above reasons.

### CASE NO. 17-060/07

The complainant was a Parking Enforcement Officer who filed a complaint against the presiding justice of the peace in relation to an appearance for a guilty plea by an accused on a charge of "park in handicap space, no permit". The complainant had issued the parking violation against the accused and was present in the courtroom for this matter. The complainant ordered and enclosed the transcript of the proceedings to support his complaint. The complainant alleged that Her Worship made comments about his physical size that centered him out in front of colleagues, officers of the court and members of the public, which he found "very embarrassing and continues to be a source of grief" for him.

In the course of the investigation, the members of the complaints committee requested and listened to the audio recording of the proceeding in question. Having concerns regarding the purpose of Her Worship's comments and the nature in which she spoke them, the committee asked for a response from Her Worship to the complaint.

In her response, Her Worship indicated that the purpose for asking the complainant to stand was to demonstrate to the accused that the officer was in attendance at the proceedings and that there were inconsistencies in the accused's submissions to the court, related to the officer's physical size. Her Worship explained that her comments were meant to reinforce that the officer was carrying out his duties properly on the day of the offence and that it was not her intention to embarrass the officer in open court by making the remarks she made.

Following a review of Her Worship's response, the committee decided to provide advice to Her Worship in person, as a suitable means of informing her that her conduct and remarks were not appropriate in the circumstances that led to the complaint. Her Worship attended before the committee and received its advice to reconsider her conduct on this occasion, and perhaps similar occasions, with a view of refraining from making such comments in the future about the physical appearance of individuals. The committee advised that making comments about the physical characteristics or differences of individuals requires a great degree of sensitivity and should be avoided if at all possible. Her Worship expressed genuine understanding of the committee's concerns and advice. Her Worship expressed her sincere regret to the complainant for her remarks and assured him that it was not her intention to embarrass him publicly.

For the above reasons, the complaints committee dismissed the complaint.

## CASE SUMMARIES

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### CASE NO. 18-001/07

The complainant was the lawyer of an adult who had been charged with numerous *Criminal Code* offences and who was appearing for a bail hearing. The bail hearing appearance came before the subject justice of the peace with the onus on the Crown to show cause in support of detainment of the accused. The complainant indicated that the Crown's evidence had included a statement from the alleged victim that he wished to challenge on the basis of the manner in which the statement had been taken. The complainant alleged that the justice of the peace expressed from the outset of the bail hearing his displeasure with the complainant challenging the Crown's evidence and upsetting His Worship's standard practice of not hearing any evidence of the case in deciding bail. The complainant further alleged that His Worship "interrupted me and belittled me, always insinuating that I was merely wasting the Court's time". In the complainant's view, his client stood "no chance of making bail because the matter was *fait accompli* – simply because of the attitude and preconceptions of [the presiding justice of the peace]".

The complaints committee reviewed the complainant's letter and requested and reviewed the transcript and audiotape of the bail proceeding in question. The complaints committee was of the view that the allegations against the presiding justice of the peace were not supported by the transcript of record. In the committee's opinion, His Worship conducted a fair bail hearing and his decision was viewed as comprehensive of the relevant issues. In addition, the complaints committee saw no evidence of prejudice against the accused or his lawyer, and was of the opinion

that the presiding justice of the peace conducted himself patiently and professionally.

The complaints committee dismissed the complaint for the above reasons.

### CASE NO. 18-002/07

The complainant received a ticket for parking in a prohibited location and elected to go to trial. The complainant indicated that he had pleaded not guilty to the parking ticket because he thought he was exempt due to his valid handicap parking permit. According to the complainant, the presiding justice of the peace became indignant and threatened to call security when the complainant asked her whether "morally he had a point by pleading not guilty". Further, the complainant alleged that Her Worship commented, "You handicapped people tend to take advantage of our laws" and threatened him with contempt of court when he objected to her remark. In the complainant's view, Her Worship demonstrated a lack of empathy and knowledge of handicapped people.

The complaints committee reviewed the complainant's letter and requested and reviewed the transcript and audiotape of the complainant's trial. The committee was of the view that the allegation that Her Worship's conduct and comments were harsh or negative against handicapped persons was not supported by the record. Her Worship did comment in her decision that, "I have never heard of such an exception and this, in my view, constitutes a misuse of this permit". However, the complaints committee was of the opinion that Her Worship

## CASE SUMMARIES

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was fully entitled to make that statement in the context of the evidence, the submissions and her decision in the case. The committee observed that the transcript and audiotape showed that Her Worship maintained her composure and professional demeanour throughout the proceeding. With respect to Her Worship's comments about calling security, the complaints committee was of the opinion that Her Worship was justified in doing so, as a response to the complainant's behaviour towards the court. The committee noted that the complainant had no right of verbal rebuttal to Her Worship's decision. If the complainant was unhappy with the decision or felt there was an error in law, his appropriate recourse was to file an appeal.

The complaints committee dismissed the complaint for the above reasons.

### CASE NO. 18-003/07

The complainant was charged with speeding contrary to the *Highway Traffic Act* and elected to go to trial. The complainant indicated that this was the third date set for the trial and explained that on the first two dates, the matter was adjourned due to insufficient time to conclude hearing his case. During the third trial date, the complainant alleged that while he was being cross-examined, the presiding justice of the peace fell asleep. The complainant indicated that during the first two appearances, he had witnessed His Worship "lean back in his chair from time to time with his eyes closed", but explained further that this was different. According to the complainant, His Worship's head was "slumped forward and

hanging down" and for about 45 seconds or more, the complainant waited in the witness box before the court clerk realized and woke His Worship. The complainant indicated that upon awakening, His Worship instructed him to step down from the witness box. His Worship went on to find the complainant guilty of speeding.

According to the complainant, the court clerk, the Crown Prosecutor and a student of the Crown's office were all aware that His Worship had fallen asleep. However, when the complainant questioned the Crown in the hallway immediately after the trial as to whether or not she had witnessed His Worship asleep on the bench, she "stormed back into the courtroom and ordered the tape to be turned back on. She stated in the presence of His Worship, the clerk and her assistant that at no time did she see His Worship asleep on the bench". When the complainant tried to make a comment, His Worship responded by telling him to keep quiet.

The complaints committee reviewed the complainant's letter and requested and reviewed the transcript and audiotape recording of the trial. After careful review of the record, the committee was of the view that there was no evidence that His Worship had fallen asleep during the course of the hearing. In the committee's opinion, the pause on the record and His Worship's comments that followed suggested he was in deep thought rather than asleep. The remarks of the prosecutor, who was present and noticeably aware throughout the proceedings, confirmed the committee's impression that His Worship had not fallen asleep

## CASE SUMMARIES

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during the cross-examination of the accused. In the committee's view, the conviction was registered following a fair and thorough hearing.

The complaints committee dismissed the complaint for the above reasons.

### CASE NO. 18-004/07

The complainant was charged with possession of marijuana under two grams and was scheduled to appear in court in an out-of-town jurisdiction before the subject justice of the peace. The complainant indicated that he was two hours and forty-five minutes late for the start of the court session, due to a number of factors beyond his control. On arrival, the complainant was informed by a clerk that his matter had been dealt with earlier in the morning in his absence and that a bench warrant had been issued for his arrest. Duty Counsel was called to assist and the complainant was asked to attend after the lunch break in order to address the matter. The complainant alleged that he addressed the court respectfully but the presiding justice of the peace responded "in a harsh and condescending tone", commenting "there is a bench warrant issued for you. This is the second time you are late! Why?" Her Worship then allegedly shouted, "Why should I rescind your bench warrant?" The complainant indicated that he "stood in silence due to nervousness and intimidation because of the justice of the peace's harsh mannerism".

The complaints committee reviewed the complainant's letter and requested and reviewed the transcript and audiotape of the proceeding in question. A response from the justice of the

peace was also requested and reviewed. The complaints committee observed that the allegations that the justice of the peace used a harsh and condescending tone and that she shouted at the complainant were not supported by the audiotape recording of the proceeding. Although Her Worship's tone was viewed as terse, the committee was of the opinion it was not improper in the circumstances. In the committee's opinion, Her Worship had jurisdiction to issue a bench warrant as the complainant did not attend the federal court in the morning when he was required to do so. When he was addressed by Her Worship in court in the afternoon, the federal court had already been completed. Her Worship noted on the record that the complainant had been late for court before and a bench warrant had been issued and then later rescinded. Her Worship asked for and received an explanation for the complainant's second late attendance, which Her Worship did not accept as sufficient grounds to rescind the warrant. The committee was of the opinion that no misconduct arose from the justice of the peace's actions in court.

The complaints committee dismissed the complaint for the above reasons.

### CASE NO. 18-005/07

The complainant was made aware of the release of a young offender and filed a complaint against the presiding justice of the peace who granted this release. The young accused had breached a recognizance entered into only a few days earlier and was appearing in a first appearance court in a reverse onus situation (where he had the onus of proving why his detention was

## CASE SUMMARIES

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not justified). For unknown reasons, no representation from the Crown's office was present, despite notification and continued pages by the court for someone to attend. The complainant cited from the transcript the presiding justice of the peace's comment that, "We will be calling up the matters and releasing everybody on an undertaking if the Crown does not show up". The complainant's concerns were that His Worship "presided with a mindset of releasing this youth regardless of the reverse onus", and regardless of the advice from duty counsel that the release was not acceptable to the Crown. In addition, the complainant indicated that the youth was released to an address where he was not welcome, in circumstance where there was no parent or guardian present in the court. He alleged that the order was not supported on the record through a statement of reasons, as required pursuant to section 515.6 of the *Criminal Code*. The complainant was of the view that His Worship's conduct could only be described as arbitrary and capricious and the decision to grant the youth's release was wrong.

The complaints committee carefully reviewed the complaint and transcript of the proceedings and was of the opinion that His Worship's decision to release the young accused and the alleged lack of supporting reasons were not matters of misconduct; rather, the proper remedy for the complainant to pursue if he disagreed with the decision or reasons was an appeal. Based on their review of the transcript, the committee was of the view that His Worship's comments and resulting action were not arbitrary, impulsive

or erratic, but merely an expression of mild frustration in attempting to conduct court business without representation from the Crown's office.

For the above reasons, the complaints committee dismissed the complaint.

### CASE NO. 18-006/07

The complainant was charged with two counts of criminal harassment in relation to his attendance at his local Post Office. As a condition of his bail, the complainant was restricted from attending his Post Office or any Canada Post outlet. According to the complainant, this restriction violated s. 345 of the *Criminal Code* as he was unable to receive any regular mail service. The complainant alleged that he was forced to sign the recognizance as he was under duress and was incarcerated at the time. The complainant also felt that the court had violated his rights under the *Charter of Rights and Freedoms*. This complaint was complaining against the justice of the peace who presided over the bail hearing and set the condition of his release.

The complaints committee dismissed the complaint as being outside of the jurisdiction of the Review Council. The committee was of the view that the complaint concerned decisions of the court and lacked foundation for an allegation of judicial misconduct. In reaching this decision, the complaints committee reviewed the sections of the *Criminal Code* and *Charter* that the complainant identified. Section 345 of the *Criminal Code* refers to the criminal act of stopping someone's mail delivery with the intent

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to rob and search that mail. With reference to the *Charter of Rights and Freedoms*, Section 8 refers to "the right to be secure against unreasonable search or seizure", section 11 (e) refers to not being "denied reasonable bail without just cause", and section 20 refers having the right to communicate with Federal institutions.

The committee advised that if the complainant felt the conditions of his release were in violation of the *Criminal Code* and/or the *Charter of Rights and Freedoms*, his appropriate remedy would be to bring a review of the bail conditions to the Superior Court of Justice. With respect to the duress that the complainant was under, the complaints committee was of the view that the duress was a direct result of the police charging the complainant and detaining him in custody, not from any action attributable to justice of the peace presiding at his bail hearing.

The complaints committee dismissed the complaint for the above reasons.

### CASE NO. 18-007/07

The complainant was charged with speeding at 77 km/hr in a 50 km/hr zone contrary to the *Highway Traffic Act*. The officer reduced the charge to speeding at 64 km/hr at the time of issuing the ticket. Despite the reduced speed and fine, the complainant indicated that he still wished to go to trial to explain what happened that evening.

In his letter, the complainant described how the prosecutor and police officer allegedly tried to convince him to plead guilty to the lesser charge,

repeating that the justice of the peace could convict him of the original speed of 77 km/hr. The complainant further indicated that the prosecutor and police officer allegedly used intimidation and stories of failed arguments and appeals in order to convince him not to go to trial. Despite the repeated efforts of the prosecutor and police officer, the complainant still wished to go to trial. On arraignment, the complainant alleged that Her Worship "rolled her eyes" when she heard him enter a plea of "not guilty by extenuating circumstances". The complainant indicated in his letter that the prosecutor saw Her Worship roll her eyes and commented "yeah" in response. Her Worship then allegedly commented that since he was unrepresented, Duty Counsel should be called to assist him. The complainant told the Review Council that in meeting with Duty Counsel (who was a defence agent for a local paralegal firm), he was convinced to plead guilty due to the absolute liability of the offence and because Her Worship was strict and didn't like excuses. Following this discussion, the complainant re-entered the courtroom and changed his plea to guilty due to the "whole strategy of intimidation" by the prosecution and others, as well as the "clear perception of prejudicial behaviour" by Her Worship. The complainant indicated that he was appalled at the conduct of everyone involved and was of the view that Her Worship was "complicit with the intimidation tactics".

The complaints committee reviewed the complainant's letter and requested and reviewed the transcript and audiotape of the proceeding. After careful review of the record, the committee was of the view that there was no evidence of

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collusion between Her Worship and the prosecutor, and noted that Her Worship had a duty to assist unrepresented accused to ensure that the defendant was aware of his rights and to promote procedural fairness. The complaints committee was of the opinion that there was no evidence that Her Worship contributed to or encouraged the alleged “intimidation” of the complainant. The committee noted that the complainant’s appropriate remedy would be to apply for a re-opening based on the alleged pressures and intimidation by the prosecutor and others. In addition, the committee noted that if the complainant had concerns with the conduct of the prosecutor or police, there are other avenues for pursuing such complaints.

The complaints committee dismissed the complaint for the above reasons.

### CASE NO. 18-008/07

The complainant was a Chief of Police, who filed a complaint against a justice of the peace in relation to complaints from members of his staff regarding the justice of the peace’s “self imposed availability and demeanour”. The complainant attached e-mail correspondence from one of their court clerks that detailed some of their concerns. The allegations contained in the e-mail correspondence included difficulty in getting informations sworn and in getting warrants signed due to Her Worship being unavailable or refusing to deal with matters despite their urgency, and Her Worship’s demeanour which demonstrated an unwillingness to assist. The complainant alleged that this resulted in officers often being required to go to another justice of

the peace, if available, or to a judge for routine matters. The correspondence also outlined one particular incident where Her Worship refused to deal with a bail hearing at 1:35 p.m. due to no paperwork being available, after being advised that an officer was en route with it and that the accused was in the process of being brought up from the cells. The complainant included a copy of the transcript of the bail proceeding to support his concerns. The complainant submitted an additional letter of complaint which included a transcript of a bail hearing conducted by the subject justice of the peace. During this bail proceeding, it was alleged that Her Worship’s demeanour in the courtroom was opinionated and rude in commenting on the duties of officers, the Crown Attorney and Duty Counsel. In his additional letter, the complainant invited the Review Council to initiate general inquiries of police staff, staff of the local Crown Attorney’s office and of court staff to gather information and support for his allegations.

The complaints committee responded to the complainant to provide information on the scope of a review conducted by the Review Council. The complaints committee explained that the governing legislation and the principles of natural justice do not provide for the Review Council to initiate general inquiries into the conduct of a judicial officer. Rather, an investigation conducted by the Review Council must be in response to specific allegations of misconduct submitted by a complainant. Pursuant to its mandate, the complaints committee, therefore, focused its review on the specific incidents identified in the complainant’s letters and the events contained in two transcripts of the bail

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proceedings before the subject justice of the peace.

Following a thorough review of the incidents, the committee was of the opinion that Her Worship's conduct, as reflected in the transcripts and the complaint correspondence, did not amount to judicial misconduct. While noting the troubling nature of the concerns expressed by the complainant, the committee members reported that the two transcripts provided by the complainant in the two cases considered did not substantiate the allegations being made. With respect to one bail proceeding in which there was no paperwork immediately available upon which to proceed, the committee noted that it was not improper for Her Worship to close her court in the circumstances but the committee observed that it would be preferable for a justice of the peace to invite the Crown to alert her or him if the paperwork was received prior to the end of the judicial day. In the other bail proceeding that was identified and reviewed, the committee reported that comments made by Her Worship towards the Crown and police evident in the transcript, while inappropriate and non-judicious, were not considered to constitute misconduct. The committee noted that a few of unnecessary remarks appeared to be expressions of frustration, rather than illustrations of direct criticism of the important work of others within the justice system.

Following a thorough review of the information in the two cases received, the committee dismissed the complaint and closed its file in the matter.

### CASE NO. 18-009/07

The complainant filed a complaint against an unnamed male justice of the peace in relation to an appearance in the Intake Court. The complainant indicated that he had attended before His Worship in an attempt to have charges laid by way of sworn private informations. According to the complainant, His Worship "refused to identify himself, refused to press charges and accept evidence". The complainant indicated that it was a "deliberate refusal to perform duties of the justice of the peace and deliberate silencing of the crime".

Based on the details of the complainant's appearance in the Intake Court along with the physical description of the justice of the peace, the Review Council confirmed the identity of the presiding justice of the peace.

The complaints committee reviewed the complaint and requested and reviewed the transcript and audiotape of the Intake Court appearance in question. After careful consideration, the committee was of the view that there was no misconduct on the part of the justice of the peace in the conduct of the matter before him or in the exercise of his judicial discretion in making the decision not to issue process. The complaints committee observed that His Worship's conduct was polite and patient in his dealings with the complainant. Further, the committee advised that the allegation of His Worship failing to perform his duties was not supported by the record.

For above reasons, the complaints committee dismissed the complaint.

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One concern of the committee arising out of their review of the record was His Worship's refusal to provide his name to a member of the public. The complaints committee noted that justices of the peace should provide their name on request, unless there is a concern over their well-being due to intimidation or a threat they have received. This reminder was sent to the justice of the peace.

### CASE NO. 18-010/07

The complainant filed a written complaint against the presiding justice of the peace in relation to an appearance for a trial on a charge of speeding. The complainant indicated that she had been charged with speeding (70 km/h in a 50 km/h zone) and she had agreed with the prosecutor in advance to plead guilty to the prosecutor's offer of 10 km/h over the speed limit. At the beginning of the court session, the complainant indicated that His Worship made the comment "that our tickets would be dismissed if the offence took place over eleven months ago and if this was our first court date". Since this was her first court date and the offence date was over eleven months earlier, the complainant felt she would get her ticket dismissed if she could "accurately say that I fulfill both variables".

The complainant alleged that His Worship "screamed at and ridiculed most of the individuals" and "arbitrarily scheduled another court date for most of them" while allegedly commenting that he "did not care to have us waste his time". The complainant indicated that she pleaded guilty to the amended speed and alleged that His Worship "laughed at me and began to yell at me as if I was

a criminal that committed a heinous crime". The complainant further alleged that His Worship "ridiculed me saying that I was not listening to him and inferred that I was an idiot" when she expressed her belief that her ticket would be dismissed. She indicated that His Worship refused to accept her plea and adjourned her case. She was of the view that having to appear a second time to fight this ticket was not only a waste of her time but also a waste of taxpayers' money. The complainant indicated that this was her first time in court and felt that she was "treated as a criminal for not understanding the legal terminology that the Judge had used before me".

The complaints committee reviewed the complainant's letter and requested and reviewed the audiotape and transcript of the complainant's attendance before His Worship. After careful consideration of the record, the complaints committee had concerns with how the self-represented complainant was treated by His Worship. As a result, the committee requested a response from His Worship to the complainant's concerns. In his response, His Worship disagreed with the complainant's characterization of the proceedings and clarified his announcement in court, that individuals wishing to challenge the continuation of the proceedings against them on the basis of unreasonable delay would be granted adjournments if the matter was older than eleven months, which was supported by a review of the record. His Worship further clarified that he could not accept the complainant's guilty plea due to her misunderstanding that she thought her case would be dismissed because it was fourteen months old. His Worship expressed regret for the use of the phrase "you're wasting the

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Court's time and everyone's time" and noted that "although pleading guilty was incompatible with expecting that the case would be thrown out, I could have expressed myself in a way that did not sound impatient".

Following a review of the response submitted by His Worship, the complaints committee invited His Worship to attend in person before the committee to receive advice. During this private advice session, the committee expressed the view that His Worship's conduct was less than professional at times in dealing with some of the defendants that afternoon and specifically in dealing with the complainant. It was noted that His Worship's tone was inappropriate and condescending and that His Worship's conduct was impatient and arbitrary at times. In addition, the committee was concerned about His Worship's lack of assistance in explaining court procedures to the complainant, a self-represented defendant, and in clarifying his statement about granting an adjournment to those wishing to challenge the continuation of their matter. In the committee's view, it was apparent from the record that the complainant was unfamiliar with court procedures and the logistics of having charges dismissed for unreasonable delay. The committee saw no attempt by His Worship to clarify this procedure for the complainant but rather His Worship acted quickly to strike her plea and adjourn the matter without regard for the complainant's wishes. This, in the opinion of the complaints committee, resulted in inconvenience and added cost to the complainant and to the administration of justice generally. Having reviewed the complaint with His Worship and after expressing the committee's opinion as to

His Worship's conduct in this matter, the committee's advice to His Worship was to reconsider his conduct in his dealings with the complainant and the other defendants that day with the view to improving his ability to conduct such matters professionally, patiently and in upholding the high standards expected of the court. His Worship was also reminded of procedural guidance provided in the decision of *R. v. Shields* that, if followed, would have assisted everyone in court that day.

In response to the committee, His Worship acknowledged and expressed understanding of their advice to him. His Worship extended his apology to the complainant through the Review Council's disposition letter, wherein he conveyed his understanding of her concerns and his regret for not demonstrating more patience.

Having provided His Worship with advice in-person respecting the concerns of the complainant, the complaints committee closed its file in the matter.

### CASE NO. 18-011/07

The complainant filed a complaint against the presiding justice of the peace in relation to his appearance in Intake Court in which he wanted to have a conviction struck and his matter re-opened. The complainant indicated that he had elected to contest a "supposed traffic violation", but did not receive any notification from the courts as to the trial date. Instead, the complainant indicated that he received a notice of conviction. Upon contacting the court, the complainant was instructed to appear before a

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justice of the peace to have the matter considered for re-opening. According to the complainant, His Worship displayed arrogance, a quick temper and an unwillingness to explain the law. His Worship allegedly refused to re-open the matter because the complainant had not provided sufficient evidence that he did not receive notice of his trial date. According to the complainant, His Worship shouted at the complainant to leave his office and called the police. The complainant was left feeling "embarrassed and bitter at the treatment" he received from His Worship.

The complaints committee reviewed the complainant's letter and requested and reviewed the audiotape and transcript of the complainant's attendance before His Worship. After careful consideration of the record, the complaints committee was of the view that there was no judicial misconduct on the part of His Worship in his consideration of this matter. The complaints committee found that the record did not support the allegations that His Worship displayed arrogance, a quick temper or that he called the police. The complaints committee did note, however, that His Worship could have listened more and made further inquiries of the complainant. His Worship's decision to deny the re-opening was completely within His Worship's judicial discretion and the Review Council had no authority to intervene and challenge that decision. The appropriate recourse, in instances where a complainant is unhappy with the decision, is to seek advice regarding appeal options or grounds for re-filing the re-opening application.

For the above mentioned reasons, the complaints committee dismissed the complaint and closed its file in the matter.

### CASE NO. 18-012/07

The complainant and his wife were charged with failure to comply with by-law notices to clean and clear debris and appeared before a justice of the peace. According to the complainant, he had planned on making a constitutional argument before the court and felt that he had served the appropriate parties. According to the complainant, His Worship would not accept his documents relating to his motion, indicating he had not properly served his motion material in advance to the appropriate parties and threatened to have him removed from court if he continued to speak. The complainant indicated that His Worship and the city prosecutor had arranged for a date for trial, which he alleged was done with no input or regard for his schedule. The complainant indicated that His Worship allegedly commented that, "This is not important enough for a constitutional argument", and demonstrated hatred and animosity in his treatment of the complainant and in controlling the proceedings.

The complaints committee reviewed the complainant's letter and requested and reviewed the transcript and audiotape of the appearance in question, as well as the continuation date. After careful review of the record, the committee was of the view that there was no judicial misconduct on the part of the justice of the peace in the conduct of the hearing before him or in the exercise of his judicial discretion in making the decision to not hear the complainant's motion and in proceeding with setting a trial date. Although the complaints committee noted that His Worship did have the option to adjourn the complainant's case for a further appearance to hear the motion, the decision to proceed and set

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the trial date was within His Worship's discretion to make. With respect to the consultation in setting the trial date, the committee noted that the record did reflect that the complainant was asked and was agreeable to the proposed date. The record also reflected that the date was suggested by the court clerk from the court availability list based upon submissions as to the time requirement for the trial. In response to the allegation that His Worship demonstrated hatred and animosity towards the complainant, the committee observed that although His Worship spoke forcefully at times, the record showed that His Worship's demeanour remained professional and his behaviour did not demonstrate bias or misconduct.

The complaints committee dismissed the complaint for the above reasons.

### CASE NO. 18-013/07

The complainant filed a complaint against a justice of the peace in relation to an attendance in Intake Court. According to the complainant, he attended before His Worship to seek relief in paying fines that were having an impact on the status of his driver's license. According to the complainant, His Worship "coldly and inexplicably refused to review my case". The complainant further alleged that His Worship commented, "I do not want to hear about your life story, your life is your business, get your priorities straight, pay the fines and get out of my office". The complainant explained in his letter that he replied to His Worship, "You gotta be kidding me", which allegedly enraged His Worship. The complainant alleged that

His Worship reacted and "got up from his seat and came around the desk like he wanted to strike me" and in the end demanded that the complainant leave immediately or he would call security. The complainant described himself as being unemployed and receiving welfare and, therefore, unable to pay the fines. The complainant said that he felt embarrassed by the alleged treatment from His Worship and was of the opinion that he was being discriminated against for being poor and unemployed.

The complaints committee reviewed the complainant's letter and requested from Court Services a copy of the audiotape and transcript of the complainant's attendance before His Worship. After careful consideration of the record, the complaints committee asked the justice of the peace for a response to the complaint. In his response, His Worship unequivocally denied that he had ever approached the complainant in an angry or threatening manner and indicated that he did not feel that the transcript of record supported the complainant's allegations.

Based on their review of the record and of His Worship's response, the committee was of the view that there was no evidence to support the complainant's allegation that His Worship reacted in an angry or threatening manner towards the complainant. Based on their review, the committee had concerns about His Worship's lack of assistance and inquiry into the complainant's situation before making a decision. Those concerns were compounded by the fact that there was a third party was in attendance during the complainant's matter. The committee received information that His Worship was in fact

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mentoring a newly appointed justice of the peace. As its disposition, the committee decided to provide advice to His Worship in person as a suitable means of informing him that his conduct, as reflected on the record, was not appropriate in the circumstances that led to the complaint. His Worship attended before the committee and received its advice to reconsider his conduct on this occasion with a view of demonstrating patience, making necessary inquiries and conducting himself professionally and as a model for others to learn from.

Following the delivery of its advice, the complaints committee closed its file in the matter.

### CASE NO. 18-014/07

The complainant believed she was a victim of sexual assault by a doctor. The complainant attended, along with a sexual assault counsellor for support, before the subject justice of the peace for the purpose of pursuing criminal charges against the doctor. The justice of the peace conducted a pre-enquête hearing to determine whether legal process should issue. After the complainant indicated that the counsellor was not being called as a witness, Her Worship allegedly excused the counsellor from remaining in the courtroom. The complainant provided background information relating to the difficulties she had experienced in obtaining evidence, since the alleged assault took place within a hospital setting. The complainant alleged that Her Worship "neither seemed interested in these matters nor cared to speak of such possible evidence". The complainant alleged that Her Worship's "judicial verbiage leaned on 'victim-blaming'" and indicated that Her Worship "shut me up immediately", indicating she would not issue process.

In addition to the allegations relating to the pre-enquête appearance, the complainant indicated that she was of the understanding that a senior staff person at the subject hospital was very closely affiliated with the members of the office of the justices of the peace in the area. From this understanding, she believed favouritism "took precedence" over anything she had to say and that Her Worship was pre-disposed of her decision before hearing the case.

The complaints committee reviewed the complainant's letter and requested and reviewed the transcript and audiotape of the pre-enquête proceeding in question. The complaints committee was of the view that the record did not support the allegations that Her Worship was uninterested in hearing about the complainant's problems in gathering evidence within the hospital setting of possible evidence that could be obtained or that Her Worship's "judicial verbiage leaned on 'victim-blaming'". Based on their review, the complaints committee found that the justice of the peace followed the appropriate protocol for a private hearing and considered all evidence presented. In response to the allegation of favouritism and predisposition, the committee saw no evidence to support to the complainant's assertion of unfair treatment of her by the presiding justice of the peace. If new evidence were to become available, the committee was of the understanding that the complainant may have the option of bringing a new application to have an information laid.

The complaints committee dismissed the complaint for the above reasons.

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### CASE NO. 18-015/07

The complainant, a court reporter, filed a complaint against a justice of the peace in relation to a Saturday WASH (Weekend and Statutory Holiday) court assignment. The complainant was assigned to the subject justice of the peace's court but was transferred to another court after another court reporter failed to show up for work. The complainant indicated that she was directed to set up the recording equipment so that the subject justice of the peace could proceed without delay, even though apparently another reporter was en route and would arrive in about an hour. The complainant alleged that the subject justice of the peace "did not/would not wait" for the replacement reporter to arrive to commence hearing matters. The complainant indicated that at some point during the proceedings, the justice of the peace noticed that the recording equipment was not working, at which time the court was adjourned and they awaited the arrival of the replacement reporter. The complainant felt that a "court of record" required a court reporter to be present and that the justice of the peace should not have commenced her court with merely the recording equipment running.

The complaints committee reviewed the complainant's letter and requested and reviewed the audiotape of the court proceeding in question. Following this review, the complaints committee requested and received a response from the subject justice of the peace to the allegations outlined by the complainant. In her response, the justice of the peace provided a detailed account of the events on the day in question. Her Worship explained that there were two justices of the peace assigned to two courts and that it was

decided in consultation with the court supervisor that the busier of the two courts should attempt to start on time and with the service of the court reporter - the complainant in this matter. Instructions were relayed to the court reporter to set-up and leave the recording system ready to use, where the recording would simply be left to run during the court session.

In the complaints committee's opinion, Her Worship demonstrated, through her response, awareness of the importance of a detailed record and made conscious decisions that day to ensure a transcript would be able to be prepared. Having regard to the number of accused waiting for court to begin, coupled with no information or indication of whether or not a replacement court reporter would be available, Her Worship made the decision to start her court and to rely on her extensive notes, along with the recording and the assistance of the 24 hour back-up recording system for her courtroom to secure the proper record of each case. During the first matter, however, Her Worship noticed that not only was the recording not turned on, but the key and tapes for the recorder were removed. Upon this discovery, Her Worship explained that she adjourned court until the arrival of a replacement court reporter, which she was informed at that time would be about an hour. The complaints committee was of the view that Her Worship responded in a reasonable and considered manner to the unique and difficult situation she was confronted with. The committee noted that all cases were eventually dealt with on the record following the attendance of the replacement court reporter. The committee was of the opinion that no misconduct arose from Her Worship's actions in court that day.

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For the aforementioned reasons, the complaints committee dismissed the complaint and closed its file.

### CASE NO. 18-016/07

The complainant indicated that she and her husband had been charged with violating a municipal by-law. According to the complainant, they had attended court on three separate occasions prior to trial. At the time of setting the trial, the prosecutor indicated to the complainant that only one witness would be called from the witness list disclosed, that being the by-law officer who had laid the charges.

In preparation for the trial, the complainant indicated that she had attended before the subject justice of the peace, who happened to be in the Intake Court, in an effort to have summonses issued for further witnesses from the prosecutor's list that she wish to have testify at their trial. The complainant indicated that His Worship, "realized who I was and who I wanted to subpoena to court", and wanted to see pre-written questions and evidence that the witnesses would be relevant and beneficial to the case. The complainant indicated that His Worship ultimately refused to issue the subpoenas and after rendering his decision, marked in his calendar "special trial" under the trial date. His Worship later presided over the trial itself. At the trial, the complainant alleged that His Worship wouldn't listen to their concerns about the validity of the charges based on errors by the by-law officer in acting on a private complaint and in completing the notices of offence.

In the end, the complainant was of the view that she and her husband were wrongly convicted and were not afforded the opportunity to fairly defend themselves against the charges. The complainant was asking the Review Council to overturn the decision or dismiss the charges.

The complaints committee reviewed the complainant's letter and requested information pertaining to the Intake Court appearance, and reviewed the transcript of the complainant's trial. After consideration, the complaints committee was of the view that there was no evidence of judicial misconduct on the part of the presiding justice of the peace. The committee noted that there was no recording available to review regarding the allegations relating to the Intake Court appearance prior to the trial. Court Services was unable to confirm any Intake Court attendance by the complainant before the subject justice of the peace during the time period indicated in the letter of complaint. In reviewing the trial transcript, the complaints committee was of the view that the justice of the peace was courteous, listened, and in fact imposed a sentence which was viewed as very generous to the complainant. The complaints committee noted that if the complainant was unhappy with the decision rendered in the case, the appropriate response would be to seek an appeal of the decision, as Council has no jurisdiction to change or overturn a decision made by a justice of the peace.

For the aforementioned reasons, the complaints committee dismissed the complaint and closed its file.

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### CASE NO. 18-017/07

This complaint was in relation to a private criminal prosecution that the complainant was pursuing in regards to parental abduction of his children, criminal harassment and obstruction of justice charges. The complainant previously attended before a justice of the peace to pursue these charges and indicated that the justice of the peace viewed the charges as serious and ordered that a detective from the Criminal Investigation Bureau investigate the matters and report back to the court. When the matter returned to court, it came before a different justice of the peace, who was the subject of this complaint. According to the complainant, the subsequent justice of the peace failed to come to court prepared and failed to listen to submissions that were being made to clarify the history of the matter and the purpose of the court appearance. The complainant further alleged that His Worship failed to grasp the seriousness of the charges that the previous Crown and justice of the peace had acted upon in ordering the police investigation. The complainant indicated that His Worship refused to hear from the police officer and decided not to issue process on the basis of insufficient evidence.

The complaints committee reviewed the complainant's letter and requested and reviewed the audiotapes and transcripts of both of the complainant's attendances before the justices of the peace. After careful consideration of the record, the complaints committee sought to clarify the circumstances that led to the complaint by asking the subject justice of the peace for a response to the complaint. In his response, His Worship indicated that he had seen no indication in the court file that the complainant's matter was a

continuation of an earlier hearing, and noted that if it was intended as a continuation, the previous justice of the peace would generally have been seized of the matter. His Worship explained what he perceived to be the purpose of the proceeding, helping to clarify sources of confusion with what the complainant was expecting to have happened during the appearance. The committee observed His Worship's response to be humble and apologetic towards the complainant for any misunderstanding. The complaints committee noted, however, that a justice of the peace has the duty and obligation to assist unrepresented litigants or defendants. In this case, the committee was of the opinion that further explanation of the process by His Worship would have been helpful and may have avoided much of the confusion. The committee did note from the record that His Worship had the clerk page the police officer; however, there was no response or attendance by the officer. The complaints committee indicated that the complainant had the option of seeking legal advice to determine what remedies, if any, may be available to him in having these charges re-visited.

For the above reasons, the complaints committee dismissed the complaint and closed the file in the matter.

### CASE NO. 18-018/07

The complainant was a court agent who alleged that the subject justice of the peace was biased and racially prejudiced against him. According to the complainant, the subject justice of the peace was a "new recruit" of a group that he alleged was

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behind past incidents of racism toward him. In his letter, the complainant referred to a number of non-specific incidents in the past that led him to believe that His Worship and other members of the judiciary are “bias racists” who do not like him and other Black court agents.

Aside from the general allegations, the complainant outlined one particular incident in his letter. The complainant described that he attended the Intake Court to assist his client with a re-opening application. The complainant alleged that His Worship denied the re-opening despite the evidence in support, due to His Worship’s dislike for him. The complainant further alleged that His Worship threatened the client with perjury for swearing a false affidavit and followed him out of the office into the common public area where he called both the client and the complainant “liars”. The complainant alleged that His Worship was enraged in his dealings with the complainant, yelling comments about him, making up stories, trying to be misleading and then called for security when the complainant questioned his statements.

The complaints committee reviewed the complainant’s letter and requested and reviewed the transcript and audiotape of the client’s appearance before His Worship. As some of the allegations related to matters that were not recorded in the Intake Court, the complaints committee requested and reviewed a response from His Worship to the complaint. His Worship expressed that he was compelled to scrutinize the complainant’s representations to the court in the past but indicated that the complainant had not been singled out by reason of race or colour, as alleged.

Following a careful review of the record and His Worship’s response, the complaints committee was of the view that there was no support for the general allegations of bias and racist treatment by members of the judiciary, including the subject justice of the peace. It was determined that the committee’s review would pertain to the specific incident involving the denied re-opening. With respect to the alleged comments made by His Worship in the public area of the Intake Court, the committee was unable to make any assessment of His Worship’s conduct or comments as such areas are not audio recorded. The committee emphasized the importance of confining any statements to the courtroom itself, which is audio recorded, for transparency and accountability.

The complaints committee noted that in His Worship’s response, he denied making any negative remarks about the complainant and he indicated that it was Court staff who called court security, not himself. The complaints committee assessed the conflicting versions of events from the complainant and His Worship following the client’s attendance in the Intake office. Without support or corroboration of the facts, the complaints committee was of the view that no further action could be taken in relation to these allegations.

In dealing with the client’s attendance, both the complaints committee and His Worship noted that the complainant’s involvement was not known at the time His Worship considered the matter. His Worship explained that he had carefully reviewed the affidavit in support of the application and exercised his discretion in denying the re-opening based on what he perceived to

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be false information in the affidavit. His Worship did acknowledge that on review of the transcript, the client had difficulty articulating the facts surrounding the ticket and affidavit. The complaints committee viewed the client's language and comprehension issues as important factors for His Worship to recognize and be aware of at all times. The committee was of the opinion that His Worship could have displayed more patience in dealing with the client and clarifying any misunderstanding of the facts expressed in the affidavit. However, the committee was of the view that His Worship's conduct was not judicial misconduct.

For the aforementioned reasons, the complaints committee dismissed the complaint and closed its file.

### CASE NO. 18-019/07

The complainant was a police officer who filed a complaint against a justice of the peace relating to court appearances in which he was testifying as a witness for the prosecution. The complainant alleged that His Worship displayed prejudice against him due to an incident involving the justice of the peace prior to his appointment. The complainant described an occasion some years prior, in which he had pulled over a car that had passed a stopped school bus that had its lights activated. The driver of the car indicated he was a member of the region's police services. After being unable to provide any identification, the complainant contacted the police division but was unable to confirm that the driver was a police officer. In the end, he gave the driver a warning instead of issuing a ticket. The alleged

driver of the vehicle was appointed a justice of the peace some years after the described incident and was the subject of this complaint for his alleged in-court conduct towards the complainant. According to complainant, His Worship "cannot let go of the past and he has been carrying a grudge". The complainant specified court appearances to support his concerns with His Worship's conduct.

On one occasion, the complainant was testifying at an ex-parte trial before His Worship. During this trial, His Worship allegedly dismissed the charge on the basis that the complainant "used different terms to describe ownership and that (he) failed to mention the VIN number for the motor vehicle". According to the complainant, both he and the prosecutor, were "surprised and puzzled by (His Worship's) behaviour and mood change" in dealing with that matter.

The complainant's next trial before His Worship was about six or seven weeks after the above court appearance. During his testimony, His Worship allegedly kept questioning the complainant about the defendant's criminal activity that took place the same night, which the complainant felt was prejudicial to the accused. According to the complainant, His Worship criticized him in open court and commented that he was concerned about the way he had withheld information from the court. The complainant indicated that he felt that these comments were a strong condemnation that was an attempt to belittle and embarrass him in front of the public and several of his subordinates.

During an appearance before His Worship approximately a month later, the complainant

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indicated that he addressed the court, saying he felt that His Worship was prejudiced against him due to the history that existed between them. His Worship apparently denied any prejudice and continued to hear the matter.

The complainant felt that His Worship was interfering with the administration of justice by allowing his personal feelings to guide him in dealing with court matters involving him.

The complaints committee reviewed the complainant's letter and requested and reviewed the audiotapes and transcripts of the complainant's three appearances before His Worship. The complaints committee also requested a third party response from the municipal prosecutor involved in the last of these appearances to clarify a statement that she made in court that suggested she may be aware of the history between the complainant and His Worship and/or that she had a concern as to a potential bias or prejudice against her witness, the complainant. In her response, she indicated that she was simply raising the issue for His Worship to decide since she had been approached by the complainant in advance of the start of court, asking that all matters he was testifying on be traversed to another court.

After careful consideration of the records of the court appearances, as well as the response from the municipal prosecutor, the complaints committee was of the view that there was no evidence of judicial misconduct on the part of His Worship in presiding over these matters. The complaints committee was of the opinion that the record did not support the complainant's

allegations of prejudice or of comments made in an attempt to embarrass or belittle him in the presence of his peers and the public. During the last appearance, the committee noted that His Worship encouraged the complainant to state on the record his basis for requesting that his matters be traversed, but that the complainant was hesitant to do so. The committee agreed with His Worship's view, as he had stated on the record, that the complainant had options for dealing with having these and future matters traversed due to any perceived prejudice. The committee was of the opinion that it would be more appropriate for the complainant to consult with his superiors and/or the Crown's office to seek advice as to the possible remedies available to him.

For the above mentioned reasons, the complaints committee dismissed the complaint and closed its file in the matter.

### CASE NO. 18-021/07

The complainant filed a complaint against the presiding justice of the peace at his trial. The complainant indicated in his letter that he had a physical disability for which he had a disability permit from the Ministry of Transportation based on his doctor's medical opinion. According to the complainant, the justice of the peace ordered him to stand during his cross-examination of the police officer, as he allegedly had determined that the complainant was not disabled. The complainant indicated that he was initially permitted to remain seated during his questioning of the officer. However, His Worship changed his mind and ordered him to stand after witnessing the

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complainant delivering some photos to the officer. According to the complainant, His Worship "became quite belligerent towards me, told me that I moved too well and was not disabled and ordered me to stand". Despite the complainant's protest and offer to retrieve his disability permit from his car, His Worship allegedly refused to hear anything further on the issue. The complainant was left with the impression that His Worship was arrogant and that he didn't really care.

The complaints committee reviewed the complainant's letter and requested and reviewed the transcript of the complainant's appearance before His Worship. As part of its investigation, the complaints committee requested and reviewed a response from His Worship to the complaint. Following careful review of the record and His Worship's response, the complaints committee was of the view that the record did not support the allegations that His Worship was belligerent or rude in having the complainant remain standing when questioning the officer. In his response, His Worship explained that he was very much aware and sensitive to disability-related issues. The complaints committee was of the view that His Worship's response was thorough and sincere in addressing the concerns raised by the complainant. In support of his decision to have the complainant stand, His Worship noted, and the transcript revealed, that after accommodating the complainant's request to remain seated, His Worship observed the complainant actively standing and walking about during the course of the hearing. That is when the justice of the peace ordered the complainant to stand when addressing the court, as he had concluded, based on his observations, that the complainant was able to do so.

For the aforementioned reasons, the complaints committee dismissed the complaint and closed its file.

### CASE NO. 18-023/07

The complainant filed a complaint against the presiding justice of the peace in relation to his trial and conviction for the charge of "turn not in safety", contrary to section 142.1 of the *Highway Traffic Act*. The complainant indicated mistakes were made by "various officials involved in my case" that, in his view, resulted in a miscarriage of justice. The complainant submitted evidence in support of his arguments at trial and focussed his complaint to the Review Council on the decisions of the court, rather than noting allegations of misconduct. The complainant alleged that he was not allowed to present his case fairly and that His Worship had made a decision not to accept important evidence. The complainant filed an appeal but was unsuccessful before a judge of the Ontario Court of Justice. The Court of Appeal dismissed his appeal for failure to meet the criteria with respect to the general importance of the matter. The complainant was requesting a re-opening and re-investigation of the incident, as well as a review of the work of trial justice of the peace.

The complaints committee reviewed the letter of complaint, as well as the written submissions and the transcript of the trial submitted by the complainant. After consideration, the complaints committee was of the view that there was no evidence of judicial misconduct on the part of His Worship in presiding over the complainant's trial or in making the decisions he made.

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In the opinion of the complaints committee, the record of the trial did not support the allegation that the complainant was denied a fair trial. The committee viewed the complainant's concerns as more decision-based, rather than pertaining to His Worship's conduct. The complaints committee noted that justices of the peace are independent judicial officers and the Justice of the Peace Review Council has no jurisdiction to review the work or decisions of a justice of the peace. It was further noted by the committee that the complainant filed an appeal of His Worship's decision, which it viewed as the appropriate action to take in having a trial decision reviewed.

For the aforementioned reasons, the complaints committee dismissed the complaint and closed its file.

### CASE NO. 18-024/07

The complainant filed a complaint against the presiding justice of the peace in relation to his wife's trial on a charge of trespassing. The complainant indicated that his wife had previously had an argument with the principal of the school where their children attended. In response, the principal had banned her from attending at the school. At trial, the complainant alleged that Her Worship "gave the school absolute power over everything and everyone on school ground" despite their right to have access to their own children. The complainant explained that the decision of Her Worship resulted in his wife effectively losing custody and access to their children whenever they go to school. An additional concern regarding the trial was Her Worship's refusal to accept an Ontario court decision

concerning an allegedly similar case where the parent was fighting for their disabled child's right to attend a regular school. The complainant indicated that they attempted to submit a news article on that case and alleged that Her Worship ignored the court decision and refused to give it any consideration unless they could provide the transcript.

The complainant was of the opinion that Her Worship failed to demonstrate common sense in applying the law and legal precedence and failed to comprehend that her decision to enforce the trespassing charge resulted in a lack of parental control and access to their own children when at school. The complainant indicated that he and his wife were aware of the Review Council's lack of jurisdiction to change the decision and informed Council they had since moved to the United States. The complainant was requesting that the Review Council reprimand Her Worship for her alleged failure to perform the basic duties of a judge in adhering to law and legal precedence.

The complaints committee reviewed the letter of complaint and requested and reviewed the transcript of the trial before Her Worship. After consideration, the complaints committee was of the view that there was no evidence of judicial misconduct on the part of Her Worship in the conduct of the hearing before her or in the exercise of her judicial discretion in making the decisions that she did in this case. The committee viewed the complainant's concerns as decision-based rather than pertaining to Her Worship's conduct. If errors in law were committed by the justice of the peace in the matter before her (and the complaints committee made

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no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Justices of the Peace Review Council.

The committee did take notice in their review of the transcript, however, that the complainant's wife was having language and comprehension difficulties. Although this was not an allegation raised by the complainant, the committee was concerned that Her Worship did not display sensitivity to this problem and take action to order an interpreter. The complaints committee was of the view that Her Worship should be reminded of the importance of ensuring all defendants are able to fully understand the proceedings and are not prejudiced by any language barrier that may exist.

For the aforementioned reasons, the complaints committee dismissed the complaint and closed its file.

### CASE NO. 18-025/07

The complainant was a barrister and solicitor who filed a complaint against a justice of the peace who had complained to the Law Society of Upper Canada about his conduct after an in-court incident. According to the complainant, the complaint filed with the Law Society included "malicious, ill-considered and unfounded claims". The complainant alleged that His Worship used "inflammatory language" and included "a disgraceful allegation of racism but offers no support for his claims". Aside from the Law Society complaint, the complainant alleged that His Worship displayed general rudeness

and a lack of knowledge, ability and temperament to properly conduct his judicial duties. In addition to his letter, the complainant attached His Worship's complaint to the Law Society and the reply he had submitted. The complainant indicated that the Law Society decided to take no further action in the matter.

The complaints committee reviewed the complainant's letter and requested and reviewed a copy of the transcript and of the audiotape of the court proceeding at the centre of His Worship's complaint to the Law Society. After careful consideration of the record, the complaints committee was of the view that there was no misconduct on the part of His Worship in his handling of the in-court incident, nor in exercising his discretion to make a complaint to the Law Society. The committee carefully reviewed His Worship's complaint in which he made reference to racial prejudice he had experienced in the past. The committee was of the opinion that these references provided context and support for lodging a complaint with the Law Society even though the complaint did not include a specific allegation of racism against the complainant. The committee viewed His Worship's complaint to the Law Society as a form of notice that he would not accept unprofessional, confrontational, disrespectful or insulting conduct directed towards him from members of the legal community.

The committee expressed the view that it was unfortunate that the interaction and conflict between His Worship and the complainant resulted in complaints being filed with each of the respective regulatory and discipline bodies.

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The members of the complaints committee noted that from time to time frustrations in court may result in remarks or actions that are viewed in hindsight as regrettable. The committee viewed the court incident in question as one of those occurrences. It was the committee's hope that through constructive communication and a display of mutual respect and diplomacy, that such instances in the future could be resolved in a professional manner that reflects well on the system of justice in the province of Ontario.

For the above reasons, the complaints committee dismissed the complaint.

### CASE NO. 19-001/08

The allegations contained in this complaint were brought to the attention of the Regional Senior Justice of the Peace who filed a complaint with the Review Council. It was reported that a justice of the peace entertained a "walk-in guilty plea" involving a family member. According to the information received, the defendant was married to the cousin of the subject justice of the peace. It was alleged that the justice of the peace acted in a conflict of interest in receiving the plea, which resulted in a suspended sentence being issued. In addition, the complainant noted the irregularity that no explanation or submission regarding penalty was provided by the defendant on the record, despite the justice of the peace noting on the receipt of the ticket that an explanation was given.

The complaints committee reviewed the complainant's letter, which included a copy of the transcript of the defendant's attendance in

Intake Court as well as copies of the ticket and receipt. The committee ordered and reviewed the audiotape recording for the subject matter. Following a review of the record, the committee was of the view that the limited record available supported the allegations made and, as a result, requested a response from the justice of the peace. In Her Worship's response, she confirmed her family relationship to the defendant and explained that she had preliminary discussions with him before formally going on the record, which included an explanation of the circumstances of the offence. Her Worship explained that she advised the defendant of his options in dealing with the ticket and indicated that the audiotape recording was only turned on to record the disposition.

In responding to the issue of the conflict of interest, Her Worship indicated that she now recognized the concerns of dealing with anyone remotely related or connected with her or her family and would avoid presiding over such matters in the future. In responding to the issue of ensuring a complete record, Her Worship expressed that she regretted that she did not ensure that the on-the-record proceedings more fully reflected all of the information that the defendant had provided. In the conclusion of Her Worship's response, she stated, "I wish to take this opportunity to assure the committee, the Council and the public that I had no intention of treating (the defendant) any differently than I would any other citizen appearing before me".

Following a review of the Her Worship's response, the complaints committee ordered and reviewed the transcript and audiotape recording for all

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matters before the subject justice of the peace on that day. In addition, the committee requested from the complainant, the Regional Senior Justice of the Peace, information relating to Her Worship's training and local development, particularly relating to Intake Court duties, as well as any local practices in handling walk-in guilty pleas. The committee also requested information from the complainant about local practices and alternatives available to accommodate situations such as this one, where a conflict of interest arises. The committee also obtained additional dates from the complainant where Her Worship was dealing with walk-in guilty pleas, so a comparison could be conducted between those cases and Her Worship's handling of the subject case.

The committee was informed that on the subject day, there were two other justices of the peace assigned to the courthouse. In addition, the committee learned that the defendant resided in the immediate area and concluded that returning to court another day would not likely have posed a hardship to him. The committee was also provided with the local practices in dealing with walk-in guilty pleas, as well as Her Worship's training history and her participation in local development and mentoring programs.

From a thorough review of the information collected in this complaint review, the committee was concerned with the conduct and discretion Her Worship exercised in dealing with the walk-in guilty plea of her relative. As its disposition, the committee decided to provide Her Worship with advice in-person with the objective of raising her awareness of the issues of conflict of interest, public perception and public confidence in the

administration of justice, the importance of ensuring a complete record, of considering all options available to her and assessing whether she would benefit from further education or mentoring.

Following the delivery of its advice, the complaints committee closed its file in the matter.

### CASE NO. 19-002/08

The complainant received a number of motor vehicle violations that spanned several years and multiple jurisdictions in the province. His driver's license had been suspended pending the payment of these outstanding fines. The complainant indicated that he was disabled and living on a fixed disability entitlement. The complainant indicated that he had successfully negotiated a payment schedule and an extension of time to pay the fines in other jurisdictions and had only one jurisdiction left in which he sought to receive approval. However, when the complainant attended before the subject justice of the peace with his application, he alleged that His Worship displayed bias against him in not approving the extension of time and payment schedule. In hearing the application, the complainant also alleged that His Worship knew or should have known that the information provided by the Provincial Offences office was false and that the information was likely to prejudice the outcome. In addition, the complainant alleged that His Worship "wilfully blocked" his submissions that would have clarified the false information.

The complainant alleged that following the initial attendance, he confirmed that false information

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was before His Worship and he believed that under the circumstances, His Worship should recuse himself from any further proceedings involving this matter. The complainant alleged, however, that His Worship was attempting to hear the matter again despite arrangements for the Regional Senior Justice to hear the matter.

The complaints committee requested a copy of the transcript and audiotape of the complainant's appearance before His Worship. In response, Court Services indicated that, after an extensive search of Intake Court sign-in sheets and dockets for the period, there was no indication that the complainant attended before His Worship during this timeframe. Court Services was then asked to provide a detailed history of the complainant's court matters in the subject court. Court Services responded with an extensive court history and documentation of the charges before the court. In reviewing the materials provided by Court Services, the complaints committee noted that the complainant had not fulfilled his previous commitments to pay his outstanding fines and was unhappy with the decision of the subject justice of the peace to not grant further extensions. The committee's investigation showed that His Worship had communicated this decision and his reasons in a letter copied to the complainant.

After a thorough review of the complaint and relevant court documents, the complaints committee was of the opinion that the complainant's concerns were decision-based rather than related to misconduct on the part of the justice of the peace. The committee advised that there was no evidence to support an allegation of improper

behaviour or conduct or that His Worship demonstrated bias against him. The court documents obtained by the committee provided a neutral and objective picture of the charges before the court, the fines imposed and the payments made by the complainant. These documents were not viewed as prejudicial or misleading against the complainant in the review of this complaint or in His Worship's decision to not grant the extension of time to payment.

For the above mentioned reasons, the complaints committee dismissed the complaint and closed its file.

### CASE NO. 19-003/08

The complainant attended court for the purpose of a trial and reported to the Review Council his concerns in relation to the conduct of a court officer, and of the presiding justice of the peace. The complainant alleged that the unnamed court officer had displayed demeaning and unprofessional behaviour towards him on a previous occasion and was before the court on the complainant's case. The complainant alleged that the presiding justice of the peace tolerated and allowed this unprofessional behaviour in his courtroom. The complainant indicated that His Worship did not want to hear the complainant's concerns about this individual and ignored the complainant and instead spoke through Duty Counsel to him. The complainant further alleged that His Worship failed to address his concerns and demonstrated a complete lack of control over his courtroom. The experience left the complainant unhappy with the treatment he received from His Worship.

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The complaints committee reviewed the complainant's letter and requested and reviewed the transcript of the complainant's appearance in court. Following careful review of the record, the complaints committee was of the view that there was no evidence of judicial misconduct on the part of the presiding justice of the peace. The committee noted, however, that the manner in which the presiding justice of the peace handled himself and the situation was not ideal, and it was the committee's opinion that His Worship's conduct demonstrated a lack of experience. Refusing to allow the complainant to address the court and requiring him to speak through Duty Counsel was viewed as not appropriate; however, it did not constitute misconduct. In addressing these concerns, the complaints committee was of the view that His Worship's abilities, protocol and confidence would improve in time and would be enhanced through the development and training programs offered through the Office of the Chief Justice. As a developmental issue, the committee was of the view that His Worship should take the opportunity to learn from this experience with the objective of handling future situations more appropriately.

For the aforementioned reasons, the complaints committee has dismissed the complaint and closed its file.

### CASE NO. 19-004/08

The complainant was charged by the Ministry of Natural Resources for allegedly dredging the shorelines of a local creek. He indicated that when he attended court for his trial, a justice of the peace who had been assigned to the court

recused himself prior to the complainant's case, indicating that another justice of the peace had requested to preside over the matter. The new justice of the peace, who was the subject of this complaint, proceeded to conduct the hearing. During the course of the hearing, the complainant alleged that Her Worship interfered and advised a Crown witness not to answer some of his questions, which the complainant felt were relevant and vital to his case. In the end, Her Worship registered a conviction and imposed a fine lower than the minimum, explaining to the Crown that, "This isn't a regular case, is it?" The complainant alleged that Her Worship acted in a conflict of interest in specifically requesting and hearing the case, as her family member was a manager in the office of the Ministry of Natural Resources that had laid the charge.

The complaints committee reviewed the complainant's letter and requested and reviewed the transcript and audiotape recording of the complainant's appearance before Her Worship. The committee also made inquiries of Court Services to determine whether another justice of the peace was originally scheduled to hear the matter. Court Services confirmed that the case had three previous court appearances, all of which were presided over by the subject justice of the peace. In addition, Court Services indicated that due to their small and remote judicial region, Her Worship was the only justice of the peace typically assigned to that court, unless a bilingual justice of the peace was needed or another justice was brought in to cover for vacation or other absences. On the day in question, Court Services indicated that Her Worship was the only justice of the peace presiding and that

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she had heard all previous scheduled matters before hearing the complainant's trial.

Following a review of the record and the information from Court Services, the complaints committee was of the view that there was no evidence of judicial misconduct on the part of Her Worship in presiding over the complainant's trial. In the opinion of the complaints committee, the record did not support the allegations that Her Worship instructed Crown witnesses or made any comments to the Crown regarding it not being a "regular case". Further, it was noted that the complainant did not raise any concerns relating to a possible conflict of interest on the record. Based on the information that Her Worship was the only presiding justice of the peace that day and given her previous involvement in the case, the committee viewed no evidence to support the allegation that Her Worship requested the case.

For the aforementioned reasons, the complaints committee dismissed the complaint and closed its file.

### CASE NO. 19-005/08

The complainant had attended before a justice of the peace and sworn a private information in which he accused an individual of assaulting him. The matter was scheduled for a pre-enquête proceeding to assess the allegations and allow for the Crown Attorney's office to provide its opinion on whether or not charges should be laid. The complaint was filed against the presiding justice of the peace at the pre-enquête. The complainant alleged that Her Worship did not

listen to his testimony and demonstrated an attitude of "arrogant disinterest". The complainant also alleged that Her Worship ordered him to be forcefully removed from the courtroom.

The complaints committee reviewed the complainant's letter and requested and reviewed the transcript and audiotape recording of the pre-enquête appearance of the complainant. After careful review, the complaints committee was of the view that the record did not support the allegation that Her Worship demonstrated an attitude of "arrogant disinterest". The committee noted, in fact, that Her Worship demonstrated that she was listening and following the testimony of the complainant by asking questions to clarify events and the evidence he was giving. With respect to the allegation that Her Worship ordered the complainant to be removed from the courtroom, the record revealed that an officer was in attendance at the end of the complainant's matter and that Her Worship remarked that the complainant "needs to be escorted out". In the committee's view, Her Worship's instructions to the officer were appropriate in the circumstances. The committee also noted that private complaints are heard in-camera and as a matter of procedure each complainant would need to leave the courtroom after their hearing, in any event.

For the aforementioned reasons, the complaints committee dismissed the complaint and closed its file.

### CASE NO. 19-006/08

The complainant successfully appealed a conviction for failing to obey a stop sign and the matter

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was scheduled to be re-heard. The complainant attended for his re-hearing and alleged that the presiding justice of the peace refused to proceed without the assistance of an interpreter. The complainant alleged that this resulted in the re-trial being delayed a further seven months. The complainant also alleged that His Worship was attempting to assist the original city prosecutor and the justice of the peace who had presided over the original trial, convicted him and imposed a suspended sentence, by trying to persuade him to plead guilty at the re-trial appearance and by raising concerns about the complainant's knowledge of court procedures. The complainant also alleged that His Worship lost his temper and began to berate him when he responded that he did not want help with court procedures and simply wanted a fair hearing.

The complaints committee reviewed the complainant's letter and requested and reviewed the transcript and audiotape of the complainant's re-trial appearance. After consideration, the complaints committee was of the view that the record did not support the allegations made. Although His Worship did express signs of frustration at times, the audio recording did not reveal a loss of temper, nor berating behaviour by His Worship. The record reflected that His Worship asked questions of the defendant to assess his comprehension of the proceedings and court procedures. The committee was of the opinion that the justice of the peace exercised his judicial discretion in adjourning the matter so that the defendant could be assisted by an interpreter. In addition, the committee was of the view that there was nothing wrong with the manner in which His Worship asked the prosecutor if there

was an opportunity for resolution in the matter. For the aforementioned reasons, the complaints committee dismissed the complaint and closed its file.

### CASE NO. 19-007/08

The complainant, who is the same complainant as in file 19-006/08, successfully appealed a conviction for failure to obey a stop sign. After delays in rescheduling, the matter was re-heard. The complainant filed allegations of miscarriage of justice against the presiding justice of the peace at the re-trial. The complainant alleged that His Worship failed to remain neutral, disallowed the cross-examination of the officer, disallowed references made to the transcript of the original trial, disallowed the complainant's *Charter* motion for unreasonable delay and generally conducted the re-trial contrary to proper procedures. The complainant was seeking to have the charge dismissed and the cost of his appeal refunded.

The complaints committee reviewed the complainant's letter and requested and reviewed the transcript and audiotape of the re-trial. After careful review, the complaints committee was of the view that the record did not support the allegations that the presiding justice of the peace failed to remain neutral or that he disallowed the complainant's cross-examination of the officer. The committee noted that His Worship attempted to focus the complainant on asking the officer questions, rather than making statements, but otherwise did not restrict cross-examination. Following their review of the audiotape and transcript, the complaints committee found that the

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justice of the peace conducted a fair and proper re-trial. The committee also noted that the transcript of the original trial was referenced throughout the proceedings but had little relevance and lent no support to the complainant's argument at the re-trial. With respect to the complainant's *Charter* arguments, the committee noted from its review of the record that there was no motion properly before the court and that the complainant merely raised the issue of unreasonable delay at the end of the proceedings, to which the prosecutor objected.

For the aforementioned reasons, the complaints committee dismissed the complaint and closed its file.

### CASE NO. 19-009/08

The complainant attended the local courthouse for the purpose of swearing a private information against employees of a fitness club, accusing them of committing forgery, fraud, and theft of identity and credit card information. The complainant alleged that His Worship dishonestly attempted to redirect the matter as a consumer issue to be

pursued with the Ministry of Consumer Affairs, rather than accepting it as a criminal complaint. The complainant alleged that His Worship was predisposed in his decision to disallow the swearing of the complaint and in suggesting to the complainant to report the matter to the police. The complainant was of the view that His Worship failed to properly perform his duties.

The complaints committee reviewed the letter of complaint and attachments. After careful review, the complaints committee was of the view that the complaint fell outside of the Review Council's jurisdiction as it related to a decision made by a justice of the peace. The committee was of the opinion that the complainant was unhappy with His Worship's decision to not advance the complainant's application to court. If the complainant disagreed with the decision, the proper procedure was to pursue the matter through other legal remedies. There was no basis for an allegation of judicial misconduct.

For the aforementioned reasons, the complaints committee dismissed the complaint and closed its file.



# APPENDIX A

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ONTARIO COURT OF JUSTICE  
JUSTICES OF THE PEACE  
CONTINUING EDUCATION PLAN  
REVISED NOVEMBER 2008

## APPENDIX - A

### ONTARIO COURT OF JUSTICE, JUSTICES OF THE PEACE – CONTINUING EDUCATION PLAN

#### JUSTICE OF THE PEACE EDUCATION PLAN

The Education Plan for the justices of the peace of the Ontario Court of Justice encompasses both initial education and mentoring of newly appointed justices of the peace as well as ongoing continuing education programs for all justices of the peace. Formal education for the justice of the peace bench is essential for the judicial system to perform and uphold public trust and confidence in the judicial system.

The goals of the initial education and mentoring program are:

- ◆ to develop and maintain a sense of judicial independence and impartiality;
- ◆ to develop the personal and professional competence necessary to exercise judicial responsibilities in an independent and impartial manner, and improve the administration of justice;
- ◆ to develop an understanding of the legal issues and substantive law in areas in which a justice of the peace will be required to exercise jurisdiction; and
- ◆ to preserve the judicial system's fairness, integrity and impartiality by eliminating bias and prejudice.

The goals of the ongoing continuing education programs are:

- ◆ to help members of the justice of the peace bench attain, maintain and advance professional competence
- ◆ to develop and maintain social awareness; and
- ◆ to encourage personal growth.

The Education Plan is premised on the fact that the justice of the peace bench is a lay bench, and that justices of the peace on appointment usually do not have legal training. The Plan provides each justice of the peace on appointment with seven weeks of intensive workshops covering all aspects of the duties they will perform as a justice of the peace. These workshops are interspersed with a mentoring program of up to six months duration, the mentoring being provided by experienced justices of the peace.

Continuing education programs give each justice of the peace an opportunity of having a minimum of six days of continuing education per calendar year dealing with a wide variety of topics, including substantive law, evidence, *Charter of Rights*, skills training and social context education. While the programs are developed and presented by judges and justices of the peace of the Court, frequent use is made of outside resources in the planning and presentation of programs. Lawyers, judges, government and law enforcement officials, academics, and other professionals have been used extensively in most education programs.

#### ADVISORY COMMITTEE ON EDUCATION

The coordination of the planning and presentation of education programs is assured by the Advisory Committee on Education. The Committee includes the Associate Chief Justice-Coordinator of Justices of the Peace as Chair (*ex officio*) and justices of the peace nominated by the Associate Chief Justice and the Association of Justices of the Peace of Ontario. The Committee meets approximately four times per year to discuss matters pertaining to education and reports to the Associate Chief Justice.

## APPENDIX-A

### ONTARIO COURT OF JUSTICE, JUSTICES OF THE PEACE – CONTINUING EDUCATION PLAN

The Senior Advisory Justice of the Peace chairs meetings of the A.C.E. Committee, and is assisted by the Senior Justice of the Peace, who also sits on the Committee and advises the SAJP on all issues pertaining to the education of justices of the peace. The Senior Justice of the Peace/Administrator of the Ontario Native Justice of the Peace Program is also a member of the Committee. He is responsible for developing and co-ordinating special apprenticeship programs for Native Justices of the Peace.

Two bilingual justices of the peace who have been responsible for developing education programs for bilingual justices of the peace are also members. The Ontario Court of Justice's counsel serves as a consultant.

The Advisory Committee on Education provides administrative and logistical support for the education programs presented within the Ontario Court of Justice. In addition, all education programs are reviewed by the Advisory Committee, which makes recommendations to the Associate Chief Justice on changes and additions to existing programs. The Committee also makes recommendations on the content and format of new programs as they are being developed.

The Justice of the Peace Education Plan has been developed based on the following principles:

1. The Associate Chief Justice-Coordinator of Justices of the Peace is responsible for establishing a plan for the continuing education of justices of the peace and implementing the plan once it has been approved by the Review Council: s. 14(1) *Justices of the Peace Act*. In turn, the Associate Chief Justice has delegated responsibility for coordinating the development and implementation of education programs to the Senior Advisory Justice of the Peace.

2. Justices of the peace as professionals are responsible for acquiring and maintaining a knowledge of the legislation and case law which affects their jurisdiction, as well as other relevant information of significance to the performance of their duties, and for developing and maintaining the skills necessary to perform these duties effectively.
3. Justices of the peace are judicial officers, and all education programs and mentoring should be based on that fact.
4. The education and mentoring of a judicial officer involves exposure to the views and practices of different judicial officers who perform judicial functions in different ways. Often, particularly in grey areas of the law, there are no pre-defined responses to deal with a matter. This is one of the most important realizations for a new justice of the peace.
5. Education encompasses a broad variety of areas, including education on legal and jurisdictional issues, an understanding of the role of a judicial officer, ethical issues impacting on judicial conduct, the development of specific skills necessary to perform the functions of a justice of the peace, and the development of an awareness of social and cultural context in which social problems and conflicts may arise and manifest themselves in judicial proceedings.
6. The education program is an essential and integral component of the work of a judicial officer. It is essential that time and resources be made available for it as a part of the judicial officer's regularly scheduled responsibilities.
7. Education is an on-going process. Upon completion of the initial education program, ongoing continuing education programs are required to maintain the standards which have been developed, to strengthen

# APPENDIX - A

## ONTARIO COURT OF JUSTICE, JUSTICES OF THE PEACE – CONTINUING EDUCATION PLAN

pre-existing skills and knowledge, and to update justices of the peace regarding legislative amendments and case law which affect the jurisdiction of a justice of the peace.

8. Technology will be an increasingly significant factor in the delivery of judicial services and education programs.

The current education plan for justices of the peace of the Ontario Court of Justice is divided into two parts:

1. Initial education and mentoring programs
2. Continuing education programs

### I. INITIAL EDUCATION AND MENTORING PROGRAM

#### *1. Materials Provided*

On appointment, each justice of the peace is provided with a copy of the following legal resources and materials:

- ◆ *Justice of the Peace Materials, Binder – revised 2008*
- ◆ *Provincial Offence Act Materials, Binder – revised 2008*
- ◆ *Youth Criminal Justice Act – Ontario Pocket Guide*
- ◆ *CD Electronic Benchbook for Justice of the Peace includes Contravention Act and Conduct of a Trial* by Allen C. Edgar
- ◆ *Commentaries on Judicial Conduct*, by the Canadian Judicial Council
- ◆ *Writing Reasons: A Handbook for Judges*, by Edward Berry

- ◆ *The Law of Traffic Offences*, by S. Hutchison, D. Rose and P. Downes
- ◆ *Stewart on Provincial Offences Procedure in Ontario*, by Sheilagh Stewart
- ◆ *The Portable Guide to Evidence 2nd Edition*, by Michael P. Doherty
- ◆ *Ontario Litigator's Pocket guide to Evidence*, by James C. Morton
- ◆ *The Law of Bail in Canada*, by Gary Trotter
- ◆ *Hutchison's Canadian Search Warrant Manual*, 2005, by Scott Hutchison
- ◆ *The Dictionary of Canadian Law Carswell 2005*
- ◆ *Regulatory & Corporate Liability*, Archibald, Jull, Roach Canada Law 2007
- ◆ *Libman on Regulatory Offences in Canada (CD)*

In addition, bilingual justices of the peace are provided with the following:

- ◆ *Vocabulaire des véhicules de transport routier*, Canadian Communications Group
- ◆ *Code Criminel*, by CCH Canadian
- ◆ *Justice Sector Lexicon – Ministry of the Attorney General*

In addition, native justices of the peace are provided with the following:

- ◆ *Annotated Indian Act*, Carswell

#### *2. Workshops*

Seven intensive week-long workshops are provided to all justices of the peace within the first few months following their appointment, including workshops on orientation; search and seizure; judicial interim release; and *Provincial Offence Act* trials.

## ONTARIO COURT OF JUSTICE, JUSTICES OF THE PEACE – CONTINUING EDUCATION PLAN

Resource people at the various workshops include judges, experienced justices of the peace, law professors, counsel with the Crown Law Office – Criminal of the Ministry of the Attorney General and the Department of Justice, crown attorneys, counsel in private practice, and counsel from the Centre for Judicial Research and Education of the Ontario Court of Justice.

### a. Orientation Workshops

The two orientation workshops are the first programs offered to newly appointed justices of the peace, as soon as possible after their appointment. The workshops are designed on the presumption that newly appointed justices of the peace come into the system with limited knowledge of the judicial system or the role of a judicial officer. The workshops are usually offered in small groups, the size dependent on the number of new appointments.

The format includes lectures, small group discussion, case studies, role-play videos and/or live demonstrations. Resource people include experienced justices of the peace, as well as law professors, crown counsel, and lawyers in private practice with expertise in specific areas of the law.

Topics covered include the transition to the bench, ethical principles for Justices and judicial conduct, the structure of the courts and *stare decisis*; the adversarial system; onus and standard of proof; judicial independence and impartiality; administering oaths and affirmations; receiving an information and considering process; private prosecutions; subpoenas; an introduction to search warrants; peace bonds; weapons disposition and prohibition hearings; *Criminal Code* orders

for assessment; *Mental Health Act* orders of examination; *Child & Family Services Act* warrants of apprehension; discrimination and harassment in the workplace; and *ex parte Provincial Offences Act* proceedings.

### b. Search and Seizure Workshop

This workshop is an intensive program in all aspects of search warrants which may be issued by a justice of the peace. It reviews the legislation and case law under s. 487 of the *Criminal Code*, s. 11 of the *Controlled Drugs and Substances Act*, and other federal and provincial statutes as well as s. 8 of the *Charter of Rights and Freedoms*.

Arrangements are made for justices of the peace to spend a number of days in the Telewarrant Centre. They attend in small groups, reviewing examples of informations to obtain a search warrant and search warrants and considering whether the warrant should issue and, if not, identifying the deficiencies in the material presented.

Specific topics covered include a review of the appropriate information required for a search warrant and information to obtain a search warrant; balancing reasonable expectations of privacy against the public interest in investigating and prosecuting offences; conditions to consider when issuing a warrant; specific rules applicable to warrants for material in the possession of lawyers, the media, and psychiatric facilities; the “four corners” rule; procedure for considering a warrant; giving reasons for refusing a warrant; sealing warrant material; and detention orders.

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## ONTARIO COURT OF JUSTICE, JUSTICES OF THE PEACE – CONTINUING EDUCATION PLAN

### c. Judicial Interim Release Workshops

The two judicial interim release workshops provide an in-depth review of all aspects of the bail process. Part of the time in these workshops is spent reviewing transcripts of bail hearings and discussing whether the accused person should be detained and, if released, the type and conditions of release. The remainder of the time is spent in lectures, discussions, and demonstrations of the various proceedings relating to judicial interim release.

Specific topics covered include remands; crown and reverse-onus bail hearings; the three grounds for detention; bans on publication; evidence; risk assessment; procedure; types of release; conditions of release; conditions of detention; releasing an accused following a bail hearing; revocation of bail; variation of bail; surety relief; bail involving young persons; and the application of *Gladue* principles in bail cases involving native defendants.

### d. Workshops on Provincial Offences Act Trials

These are two intensive workshops on the trial of an offence under the *Provincial Offences Act*. The sessions focus on relatively straightforward trials that comprise the majority of the trials over which justices of the peace preside. Such trials are completed in a single day, with an oral judgment delivered at the end of the trial, and with an unrepresented defendant or a defendant who is represented by a licenced paralegal. Lectures, case studies, discussion groups and demonstrations are used to present the topics in this workshop.

Specific topics covered include the role of the prosecutor, defendant and justice of the peace; the presumption of innocence; proof beyond a reasonable doubt; elements of the offence; guilty pleas to the offence charged or another offence; *mens rea*, strict liability and absolute liability offences; defences to regulatory charges, including due diligence, reasonable mistake of fact and officially induced error; trial procedure; presentation of evidence; rules of evidence; the voir-dire; dealing with the self-represented defendant; *Charter* applications; access to justice issues; paralegals in the courtroom; dealing with an incompetent agent; requests for a bilingual trial; reasonable doubt and findings of credibility; articulating reasons for judgment; sentencing; and trials of young persons.

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### 3. Mentoring

In addition to the workshops described above, the core element of education for newly appointed justices of the peace remains mentoring. This involves the new justice of the peace working, usually on a one-on-one basis, with a more experienced justice of the peace who has been designated as a mentor by the Associate Chief Justice-Coordinator of Justices of the Peace, in conjunction with the SAJP and RSJP. Their primary responsibility is to assist the new justice of the peace in making the transition to the bench. This mentoring allows the justice of the peace to learn on a practical basis how to carry out his or her judicial responsibilities.

Separate mentoring programs are offered on the various duties justices of the peace

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## ONTARIO COURT OF JUSTICE, JUSTICES OF THE PEACE – CONTINUING EDUCATION PLAN

perform, including intake courts, bail courts, assignment courts and *Provincial Offences Act* trial courts. Different justices of the peace are often involved as mentors at different stages of the program. The period of time a new justice of the peace spends in a mentoring program varies with the individual justice, but it can last up to six months and sometimes longer.

In order to strengthen the mentoring program, the Ontario Court of Justice has also offered a number of workshops for mentors. These workshops focus on a discussion of issues faced by mentors in order to encourage consistency in education across the various parts of the province. They also include discussions of the mentoring process itself, and various mentoring and adult education techniques which may be of assistance in facilitating the learning process for new justices of the peace.

### 4. Internal Judicial Progression

From time to time, justices of the peace with a non-presiding designation are re-appointed as presiding justices of the peace through internal judicial progression. As presiding justices of the peace, they acquire the authority to preside at the trial of an offence under the *Provincial Offences Act* and also consider walk-in guilty pleas.

In order to enable them to discharge these additional duties, these justices of the peace are also offered an opportunity to attend the workshops on the trial of an offence under the *Provincial Offences Act*. They also participate in the separate mentoring program offered on *Provincial Offences Act* trial courts.

## II. CONTINUING EDUCATION

Continuing education supports the on-going professional development of the justice of the peace bench. Various materials and programs are provided on an ongoing basis to facilitate this process.

### 1. Materials Provided

In addition to the materials provided on appointment, each justice of the peace is provided, on an annual basis, with a copy of the following:

- ◆ *Criminal Code*
- ◆ *Annotated Provincial Offences Act*, Carswell
- ◆ *Annotated Highway Traffic Act*, Carswell
- ◆ *Ontario Provincial Offences, Justice of the Peace Edition*, Carswell
- ◆ *Electronic Bench Book* – [updated annually]: This CD contains, among other things, the *Justice of the Peace Materials*, *Conduct of a Trial*, presentations from various education programs, federal and provincial legislation, and over 1400 court decisions relevant to justices of the peace.

On an annual basis, bilingual justices of the peace are also provided with a *Code Criminel*, and native justices of the peace are provided with a copy of the *Annotated Indian Act*.

### 2. Annual Spring and Fall Conferences

The cornerstone of the continuing education programs for justices of the peace are the annual spring and fall conferences. Every justice of the peace is invited to attend one of

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### ONTARIO COURT OF JUSTICE, JUSTICES OF THE PEACE – CONTINUING EDUCATION PLAN

these conferences in both the spring and the fall of each year. Each of these conferences is three days in length. The conferences use a combination of lectures, panel discussions, demonstrations and small group discussions.

Resource people at these conferences have included judges of all levels of courts, including the Ontario Court of Appeal and the Supreme Court of Canada; experienced justices of the peace; counsel from the Crown Law Office – Criminal and local crown attorneys; counsel from the Ministries of the Environment, Labour and Natural Resources; counsel from the federal Department of Justice; defence counsel in private practice; law professors; academics from other fields; and professionals from a wide variety of backgrounds.

The topics covered at these conferences are wide ranging and vary from year to year. Specific topics which have been covered in recent conferences include delivering oral judgments; risk assessment and indicators of lethality at bail hearings; the *Youth Criminal Justice Act*; eye witness identification; pre-trials; specific issues at trials of regulatory offences; fly-in-courts, residential schools; application of *Gladue* principles; mistrials and bias; accident reconstruction; search warrant issues; the *Domestic Violence Protection Act*; orders for examination under the *Mental Health Act*; child apprehension warrants under the *Child and Family Services Act*; evidence; discrimination and harassment in the workplace; stress management; and pre-retirement planning.

#### 3. Native Workshop

The Native Workshop is a workshop to which all native justices of the peace are

invited. It is sponsored jointly by the Office of the Chief Justice and the Ontario Native Justice of the Peace Program. These workshops focus on a mix of substantive legal issues and other non-legal issues relevant to native justices of the peace. It is three days in length, and held in northern Ontario. Approximately 20 – 25 native justices of the peace attend each year.

Resource people have included judges, experienced justices of the peace, counsel from the Crown Law Office – Criminal and the Crown Law Office – Civil as well as other lawyers in the Ministry of the Attorney General, lawyers in private practice, and representatives of various Aboriginal organizations.

Specific topics covered at recent native workshops include search and seizure, bail, private prosecutions, avoiding conflicts in small communities, Aboriginal rights of Métis, and community justice development projects of the Ontario Native Justice of the Peace Program.

#### 4. French Workshop

A three day intensive workshop is offered to bilingual justices of the peace once a year. The workshop is usually held in Ottawa. Approximately 20 – 25 bilingual justices of the peace attend. The workshop is conducted entirely in French, allowing the participants to converse in the French language.

All resource people are fluent in the French language. They have included judges, experienced justices of the peace, law professors, legal translators, and counsel from the Ministry of the Attorney General and the Department of Justice.

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### ONTARIO COURT OF JUSTICE, JUSTICES OF THE PEACE – CONTINUING EDUCATION PLAN

A core part of each workshop is the enhancement of the use of French legal terminology. Recent topics have included discussions of Anglicism's in French, the legal obligations of the court to provide French or bilingual services, accident reconstructions, delivering oral judgments in French and visits to the Supreme Court of Canada.

#### **5. Computer Training**

Since 1999, all justices of the peace have been provided with a laptop computer. Basic training was provided to most justices of the peace in Windows, Microsoft Word, and Microsoft Outlook. In addition, justices of the peace receive training in Quicklaw during their initial education program.

Computer skills and computer literacy vary greatly among justices of the peace. The ability to function effectively in an electronic environment will become increasingly important in the upcoming months and years.

The use of hyperlinks in a bi-weekly publication prepared by the Centre for Judicial Research and Education entitled, *Items of Interest* is designed to facilitate electronic research of case law and legislation. Computer training continues to be provided on an as-needed basis.

#### **6. External Conference Policy**

For some years, the Office of the Chief Justice has re-imbursed justices of the peace for the expenses incurred in taking workshops or conferences offered by outside sources, at the request of the justice of the peace. This funding was made available for

workshops or conferences which assisted the justice of the peace in performing his or her assigned duties. There is now a budget in place for attendance at these conferences.

#### **7. Specialized Workshops**

In addition to the above regularly scheduled workshops, the Court also offers specialized workshops from time to time on a variety of topics, including trials of offences under the *Occupational Health and Safety Act*, bail, judicial administration and mentoring.

### **III. OTHER EDUCATIONAL RESOURCES**

#### **1. Centre for Judicial Research and Education**

Justices of the peace of the Ontario Court of Justice have access to the Ontario Court of Justice Centre for Judicial Research and Education. The Centre for Judicial Research and Education, a law library and computer research facility, is staffed by four counsel together with administrative staff and is accessible in person, by telephone, e-mail or fax. The Centre for Judicial Research and Education responds to specific requests from judges and justices of the peace for information and research.

In addition, the Centre provides updates with respect to legislation and relevant case law through its regular publication *Items of Interest*, which is distributed to every judge and justice of the peace electronically on a bi-weekly basis. It also contains hyperlinks to relevant legislation and web sites of

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### ONTARIO COURT OF JUSTICE, JUSTICES OF THE PEACE – CONTINUING EDUCATION PLAN

interest, including those with decisions of the Supreme Court of Canada and the Ontario Court of Appeal.

#### *2. Regional Meetings*

The Ontario Court of Justice is divided into seven regions for the purposes of judicial administration. All regions hold annual regional meetings. While the meetings principally provide an opportunity to deal with regional administrative and management issues, they also have an educational component.

#### *3. Self-directed Learning*

In addition to the educational programs outlined above, the ongoing education of justices of the peace continues to be self-directed and is effected through continuing peer discussions and individual reading and research.

# APPENDIX B

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PRINCIPLES OF JUDICIAL OFFICE  
OF JUSTICES OF THE PEACE  
OF THE ONTARIO COURT OF JUSTICE

# APPENDIX - B

ONTARIO COURT OF JUSTICE, JUSTICES OF THE PEACE – PRINCIPLES OF JUDICIAL OFFICE

## PRINCIPLES OF JUDICIAL OFFICE OF JUSTICES OF THE PEACE OF THE ONTARIO COURT OF JUSTICE

*“Respect for the Judiciary is acquired through the pursuit of excellence in administering justice.”*

### Preamble

A strong and independent judiciary is indispensable to the proper administration of justice in our society. Justices of the peace must be free to perform their judicial duties without fear of reprisal or influence from any person, group, institution or level of government. In turn, society has a right to expect those appointed as justices of the peace to be honourable and worthy of its trust and confidence.

The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office.

The following principles of judicial office are established by the justices of the peace of the Ontario Court of Justice and set out standards of excellence and integrity to which all justices of the peace subscribe. These principles are not exhaustive. They are designed to be advisory in nature and are not directly related to any specific disciplinary process. Intended to assist justices of the peace in addressing ethical and professional dilemmas, they may also serve in assisting the public to understand the reasonable expectations which the public may have of justices of the peace in the performance of judicial duties and in the conduct of their personal lives.

### 1. THE JUSTICE OF THE PEACE IN COURT

1.1 Justices of the peace must be impartial and objective in the discharge of their judicial duties.

Commentaries:

Justices of the peace should not be influenced by partisan interests, public pressure or fear of criticism.

Justices of the peace should maintain their objectivity and shall not, by words or conduct, manifest favour, bias or prejudice towards any party or interest.

1.2 Justices of the peace have a duty to follow the law.

Commentaries:

Justices of the peace have a duty to apply the relevant law to the facts and circumstances of the cases before the court and to render justice within the framework of the law.

1.3 Justices of the peace will endeavour to maintain order and decorum in court.

Commentaries:

Justices of the peace must strive to be patient, dignified and courteous in performing the

# **APPENDIX - B**

## **ONTARIO COURT OF JUSTICE, JUSTICES OF THE PEACE – PRINCIPLES OF JUDICIAL OFFICE**

duties of judicial office and shall carry out their role with integrity, appropriate firmness and honour.

educational conferences, writing and working on committees for the advancement of judicial interests and concerns, provided such activities to do not interfere with their primary duty to the court.

### **2. THE JUSTICE OF THE PEACE AND THE COURT**

2.1 Justices of the peace should approach their judicial duties in a spirit of collegiality, cooperation and mutual assistance.

2.2 Justices of the peace should conduct court business with due diligence and dispose of all matters before them promptly and efficiently having regard, at all times, to the interests of justice and the rights of the parties before the court.

2.3 Reasons for judgment should be delivered in a timely manner.

2.4 Justices of the peace have a duty to maintain their professional competence in the law.

#### **Commentaries:**

Justices of the peace should attend and participate in continuing legal and general education programs.

2.5 The primary responsibility of justices of the peace is the discharge of their judicial duties.

#### **Commentaries:**

Subject to applicable legislation, justices of the peace may participate in law related activities such as teaching, participating in

### **3. THE JUSTICE OF THE PEACE IN THE COMMUNITY**

3.1 Justices of the peace should maintain their personal conduct at a level which will ensure the public's trust and confidence.

3.2 Justices of the peace must avoid any conflict of interest, or the appearance of any conflict of interest, in the performance of their judicial duties.

#### **Commentaries:**

Justices of the peace must not participate in any partisan political activity.

Justices of the peace must not contribute financially to any political party.

3.3 Justices of the peace must not abuse the power of their judicial office or use it inappropriately.

3.4 Justices of the peace are encouraged to be involved in community activities provided such involvement is not incompatible with their judicial office.

#### **Commentaries:**

Justices of the peace should not lend the prestige of their office to fund-raising activities.



# APPENDIX C

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## JUSTICES OF THE PEACE OTHER REMUNERATIVE WORK POLICY AND APPLICATIONS APPROVED

NOTE: This version of the policy and procedures reflects decisions of the Review Council up to December, 2008. For current procedures, please see the Review Council's website at <http://www.ontariocourts.on.ca/jprc/en/policy/>

## APPENDIX - C

### OTHER REMUNERATIVE WORK POLICY AND APPLICATIONS APPROVED

## POLICY OF THE JUSTICES OF THE PEACE REVIEW COUNCIL RE: EXTRA-REMUNERATIVE WORK

### Criteria & Procedure for Approval

1. All Justices of the Peace, whether presiding or non-presiding, are required to seek the written authorization of the Justices of the Peace Review Council before accepting or engaging in any extra-remunerative work, in accordance with section 19 of the *Justices of the Peace Act*, as revised January 1, 2007.

#### Procedure:

An application for such authorization will be made by the Justice of the Peace to the Justices of the Peace Review Council, in writing, and will set out a detailed explanation of the activity for which approval is sought and an estimate of the time commitment required. This application will be accompanied by a letter from the relevant Regional Senior Justice of the Peace providing his or her opinion with respect to the suitability of such employment based on the applicant's current assignment of duties and time commitments.

2. All such applications to the Justices of the Peace Review Council will be considered by Council at the earliest possible opportunity and the Justice of the Peace will be advised of its decision, in writing. If Council decides not to grant the request to engage in extra-remunerative work, written reasons will be given for such decision.
3. The following are some of the criteria which will be considered by the Council in assessing whether or not approval will be granted:
  - a) whether there is an actual, or perceived, conflict of interest between the duties as assigned and the extra-remunerative activity for which approval is sought; or

(examples of potential conflict of interest include: employment by government in any capacity related to the administration of justice, the courts or corrections, engagement in the practice of law, employment in a legal clinic or a law firm, etc.)

- b) whether the nature of the activity for which the Justice of the Peace seeks approval will present an intrusive demand on the time, availability or energy of the Justice of the Peace and his or her ability to properly perform the judicial duties assigned;
- c) whether the activity for which the Justice of the Peace seeks approval is a seemly or appropriate activity in which a judicial officer should engage, having regard to the public perceptions of judicial demeanour, independence and impartiality.

This policy regarding extra-remunerative work is retro-active to January 1, 2007.

DATED at Toronto, this 23rd day of November, 2007.

### JUSTICES OF THE PEACE REVIEW COUNCIL

P. O. Box 914  
Adelaide Street Postal Station  
31 Adelaide Street East  
Toronto, Ontario M5C 2K3

Telephone: 416 - 327-5746  
Facsimile: 416 - 327-2339  
Toll Free No.: 1-800-695-1118

## APPENDIX-C

### OTHER REMUNERATIVE WORK POLICY AND APPLICATIONS APPROVED

## APPLICATIONS FOR APPROVAL OF EXTRA-REMUNERATIVE WORK IN 2008

### *Application One:*

The members of the Justices of the Peace Review Council approved a request by a justice of the peace to teach a course at a college during the Fall, 2008 term. The Council approved of the request in this instance on an exceptional basis based on the particular circumstances of the scheduling and judicial assignment needs of the base court location at this point in time.

The Council had confirmed with the Regional Senior Justice of the Peace that Council's approval of the request would present no difficulties in fulfilling judicial assignments during the period of teaching. The approval of Council was subject to the following conditions. The justice of the peace's availability to instruct must not impact upon his availability to fulfil his primary responsibilities as a justice of the peace during assigned hours. As well, the Council stated that while His Worship could accept remuneration for these services, but such remuneration must be the same as that paid to other instructors and be without regard to the position held as a justice of the peace.

Taking into account the general rule that teaching should be in the evening, the justice of the peace was advised that should he wish to undertake extra-remunerative opportunities in the future, he should approach the school at an early point in their curriculum planning phase to advise that, while it is acknowledged that the College makes an effective contribution to the justice system through its important role in providing education for paralegal professionals, recognizing the needs of the courts, he would request that, if possible, scheduling accommodate evening teaching.

### *Application Two:*

The Review Council determined that teaching a course at a college during the Winter, 2009 term would not be perceived as a conflict of interest with His Worship's assigned duties as a justice of the peace.

The Council confirmed with the Regional Senior Justice of the Peace that Council's approval of the request would present no difficulties in fulfilling judicial assignments during the period of teaching. The school had provided a letter respecting the issue of teaching in the evening rather than during the daytime. However, the Council indicated that it remains the view and preference of Council that educational teachings by justices of the peace be engaged in during the evenings rather than during weekdays, so as not to present any potential impact on judicial responsibilities or pose issues relating to fulfilling scheduling obligations at a base court location.

The approval was subject to the conditions the justice of the peace could accept remuneration for these services, but such remuneration must be the same as that paid to other instructors and be without regard to his position as a justice of the peace.



# APPENDIX D

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ONTARIO JUDICIAL COUNCIL  
JUSTICES OF THE PEACE REVIEW COUNCIL  
BROCHURE:  
*DO YOU HAVE A COMPLAINT?*

The information in this brochure deals with complaints of misconduct against a Provincial Judge or a Justice of the Peace.

# APPENDIX - D

## BROCHURE "DO YOU HAVE A COMPLAINT?"

### Making a Complaint

If you have a complaint of misconduct about a provincial judge or a justice of the peace, you must state your complaint in a signed letter. The letter of complaint should include the date, time and place of the court hearing and as much detail as possible about why you feel there was misconduct. If your complaint involves an incident outside the courtroom, please provide as much information as you can, in writing, about what you feel was misconduct on the part of the judge or justice of the peace.

### Just a reminder...

The Ontario Judicial Council may only investigate complaints about the *conduct* of provincially appointed judges. The Justices of the Peace Review Council may only investigate complaints about the *conduct* of justices of the peace. If you are unhappy with a *decision* of a judge or a justice of the peace in court, you can pursue an appeal on your own or by consulting with a lawyer or paralegal.

Any complaint about the *conduct* of a federally appointed judge (e.g. Superior Court of Justice or Ontario Court of Appeal) should be directed to the Canadian Judicial Council in Ottawa.

### How are Complaints Processed?

*If your complaint is about a judge:* The Ontario Judicial Council will write to you to let you know your letter of complaint has been received. A complaint sub-committee, which includes a judge and a community member, will investigate your complaint and make a recommendation to a larger review panel. This review panel, consisting of two judges, a lawyer and another community member, will also carefully review your complaint prior to reaching its decision.

*If your complaint is about a justice of the peace:* The Justices of the Peace Review Council will write to you to let you know that your letter of complaint

has been received. A complaints committee, consisting of a judge, a justice of the peace and a lawyer or community member will investigate your complaint. The complaint will be carefully considered before a decision is made.

### Provincial Judges in Ontario – Who are they?

In Ontario, most criminal and family law cases are heard in the Ontario Court of Justice by one of the many judges appointed by the province to ensure that justice is done. Provincial judges are lawyers who have practised law for a minimum of 10 years before their appointments to the bench.

### Justices of the Peace in Ontario – Who are they?

Justices of the peace are also appointed by the province. Their assignments include conducting trials under the *Provincial Offences Act* or municipal by-laws, presiding at bail hearings, and conducting most criminal remand courts. When not in court, they perform a number of functions, including issuing search warrants. Most justices of the peace are not lawyers but must meet the qualifications set out in the *Justices of the Peace Act*.

### What does the colour of the sash indicate?

- Judges wear red sashes
- Justices of the peace wear green



### Ontario's Justice System:

In their roles, our provincial judges and justices of the peace have the difficult but vital job of deciding the outcome of a case based on the evidence they hear in court and their knowledge of the law. One party will almost always be seen as the winner or the

# APPENDIX - D

## BROCHURE "DO YOU HAVE A COMPLAINT?"

loser. For this type of justice system to work, judges and justices of the peace must be free to make their decisions courageously, independently, and justly even if one of the parties will be unhappy with the outcome.

### What if You Disagree with the Decision Reached in Court?

A judge's decision can result in many serious consequences. These can range from a fine, probation, a jail term or, in family matters, orders directing custody, access and support of children.

A justice of the peace's decision can also be serious. For example, in provincial offences court, it may result in a fine, probation, a jail sentence, or a suspension of a driver's licence. In bail court, denial of bail could result in imprisonment until the conclusion of a criminal trial.

Often, the decision leaves one party disappointed. If one of the parties involved in a court case thinks that a judge or justice of the peace has reached the wrong *decision or conclusion*, he or she may request a review or appeal of the decision in higher court. This higher court is more commonly known as an appeal court. If the appeal court agrees that a mistake was made, the original decision can be changed, or a new hearing can be ordered.

### Professional Conduct of Judges and Justices of the Peace

In Ontario, we expect high standards both in the delivery of justice and in the *conduct* of the provincial judges and justices of the peace who have the responsibility to make decisions. If you have a complaint about the conduct of provincial judges or

justices of the peace, as opposed to the outcome of a trial, you may make a formal complaint.

Examples of misconduct could include: gender or racial bias, having a conflict of interest with one of the parties or unprofessional conduct.

### Who Can You Contact if You Have a Complaint?

In Ontario, there are two Councils that have the authority to investigate complaints arising from conduct of provincial judicial officers. The Council that you would contact depends upon whether your concern is about the conduct of a provincial judge or a justice of the peace.

If the court case was a criminal or family matter in the Ontario Court of Justice, the judicial officer was likely wearing a red sash and was a provincial judge. For a bail hearing, or a provincial offence (e.g. traffic violation) or municipal offence (e.g. parking or noise violation) case, the judicial officer was likely wearing a green sash and was a justice of the peace.

### Complaint about a Provincial Judge: The Role of the Judicial Council

The Ontario Judicial Council is an agency which was established by the Province of Ontario under the *Courts of Justice Act*. The Judicial Council serves many functions, but its main role is to investigate complaints of misconduct made about provincially appointed judges. The Council is made up of judges, lawyers and community members. The Council does not have the power to interfere with or change a judge's decision on a case. Only an appeal court can change a judge's decision.

## APPENDIX - D

### BROCHURE "DO YOU HAVE A COMPLAINT?"

#### *Complaint about a Justice of the Peace: The Role of the Justices of the Peace Review Council*

The Justices of the Peace Review Council is an agency which was established by the Province of Ontario under the *Justices of the Peace Act*. The Review Council serves many functions, but its main role is to investigate complaints of misconduct made about justices of the peace. The Council is made up of judges, justices of the peace, a lawyer and community members. The Council does not have the power to interfere with or change a justice of the peace's decision on a case. Only an appeal court can change a justice of the peace's decision.

#### *Decisions of the Councils*

Whether your complaint is about a judge or a justice of the peace, misconduct is taken seriously by the Council responsible for considering the particular complaint.

If the members of a Council considering a complaint believe that an allegation of misconduct has a basis in fact and may result in a finding of judicial misconduct, a public hearing may be held and appropriate disciplinary measures will be determined.

It may result in penalties ranging from issuing a warning to the judge or justice of the peace, to recommending that a judge or justice of the peace be removed from office.

If after careful consideration of a complaint, members of a Council decide there has been no judicial misconduct, your complaint will be dismissed and you will receive a letter outlining the reasons for the dismissal.

In all cases, you will be advised of any decision made by the Council.

#### *For Further Information*

If you need any additional information or further assistance, in the greater Toronto area, please call 416-327-5672. If you are calling long distance, please dial the toll-free number: 1-800-806-5186.

TTY/Teletypewriter users may call:  
1-800-695-1118, toll free.

For further information on the Ontario Judicial Council, please see their website at:  
<http://www.ontariocourts.on.ca/ojc/en/>

For further information on the Justices of the Peace Review Council, please see their website at:  
<http://www.ontariocourts.on.ca/jprc/en/>

#### *Written complaints should be mailed or faxed to:*

For a complaint about a provincial judge:  
The Ontario Judicial Council  
P.O Box 914  
Adelaide Street Postal Station  
31 Adelaide St. E.  
Toronto, Ontario M5C 2K3  
416-327-2339 (FAX)

For a complaint about a justice of the peace:  
The Justices of the Peace Review Council  
P.O Box 914  
Adelaide Street Postal Station  
31 Adelaide St. E.  
Toronto, Ontario M5C 2K3  
416-327-2339 (FAX)

# APPENDIX-E

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EXCERPTS FROM COMPLAINTS PROCEDURES  
ESTABLISHED UNDER THE FORMER  
*JUSTICES OF THE PEACE ACT*  
(BEFORE THE AMENDMENTS RESULTING  
FROM THE ACCESS TO JUSTICE ACT, 2006)

Note: For current procedures, please see the Review Council's website at <http://www.ontariocourts.on.ca/jprc/en/policy/>

## APPENDIX - E

### EXCERPTS FROM COMPLAINTS PROCEDURES ESTABLISHED UNDER THE FORMER JUSTICES OF THE PEACE ACT

#### SECTION 11 INQUIRY

It is sometimes necessary to conduct a more formal investigation into serious complaints of misconduct and in those instances, after reviewing the preliminary investigative materials, the members of the JPRC may determine to conduct a section 11 inquiry.

In those instances, the A/Registrar will engage outside legal counsel to prepare a "Notice of Hearing" which outlines the particulars of the complaint to be addressed by Council. The Notice is personally served on the justice of the peace.

The section 11 inquiry is held *in camera* and on the record. The justice of the peace is entitled to appear in person and to be represented by counsel. The Review Council has all the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the investigation as if it were an inquiry under that *Act*.

At the conclusion of the inquiry, the members of the JPRC will determine whether or not to recommend to the Attorney General that a public inquiry, under section 12 of the *Justices of the Peace Act*, be held. A copy of their report to the Attorney General is given to the justice of the peace. The person who made the complaint is informed of the disposition of the complaint, but is not given a copy of Council's report. The Attorney General may make all or part of the report public, if he or she is of the opinion that it is in the public interest to do so, but this is rarely done. The report to the Attorney General may also include a recommendation by the JPRC that the justice of the peace be compensated for all or part of his or her costs in connection with the investigation of the complaint.

#### SECTION 12 PUBLIC INQUIRY

The Lieutenant Governor in Council may appoint a judge of the Ontario Court of Justice to inquire into the question of whether there has been misconduct

by a justice of the peace, on the recommendation of the JPRC, following the conclusion of its investigation under section 11 of the *Justices of the Peace Act*.

The *Public Inquiries Act* applies to "section 12 inquiries".

#### REPORT OF THE SECTION 12 INQUIRY

The report of the inquiry that is held pursuant to section 12 (the "public inquiry") may recommend that the Lieutenant Governor in Council remove the justice of the peace from office in accordance with Section 8 of the *Justices of the Peace Act* or it may recommend that the Justices of the Peace Review Council implement a disposition under subsection (3.3) of section 12 of the *Act*. The judge who conducts the public inquiry may also determine that the justice of the peace did not misconduct him or herself and, in effect, "dismiss" the complaint at the conclusion of the inquiry.

The report of the public inquiry may also recommend that the justice of the peace be compensated for all or part of the cost of legal services incurred in connection with the inquiry. The amount of compensation recommended shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services.

The report of the public inquiry shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days after the commencement of the next session.

#### REMOVAL FROM OFFICE

A justice of the peace can only be removed from office if the judge conducting the section 12 public inquiry concludes that the justice of the peace has become incapacitated or disabled from the due execution

## APPENDIX - E

### EXCERPTS FROM COMPLAINTS PROCEDURES ESTABLISHED UNDER THE FORMER JUSTICES OF THE PEACE ACT

of his or her office by reason of infirmity, conduct that is incompatible with the execution of the duties of his or her office, or having failed to perform the duties of his or her office as assigned.

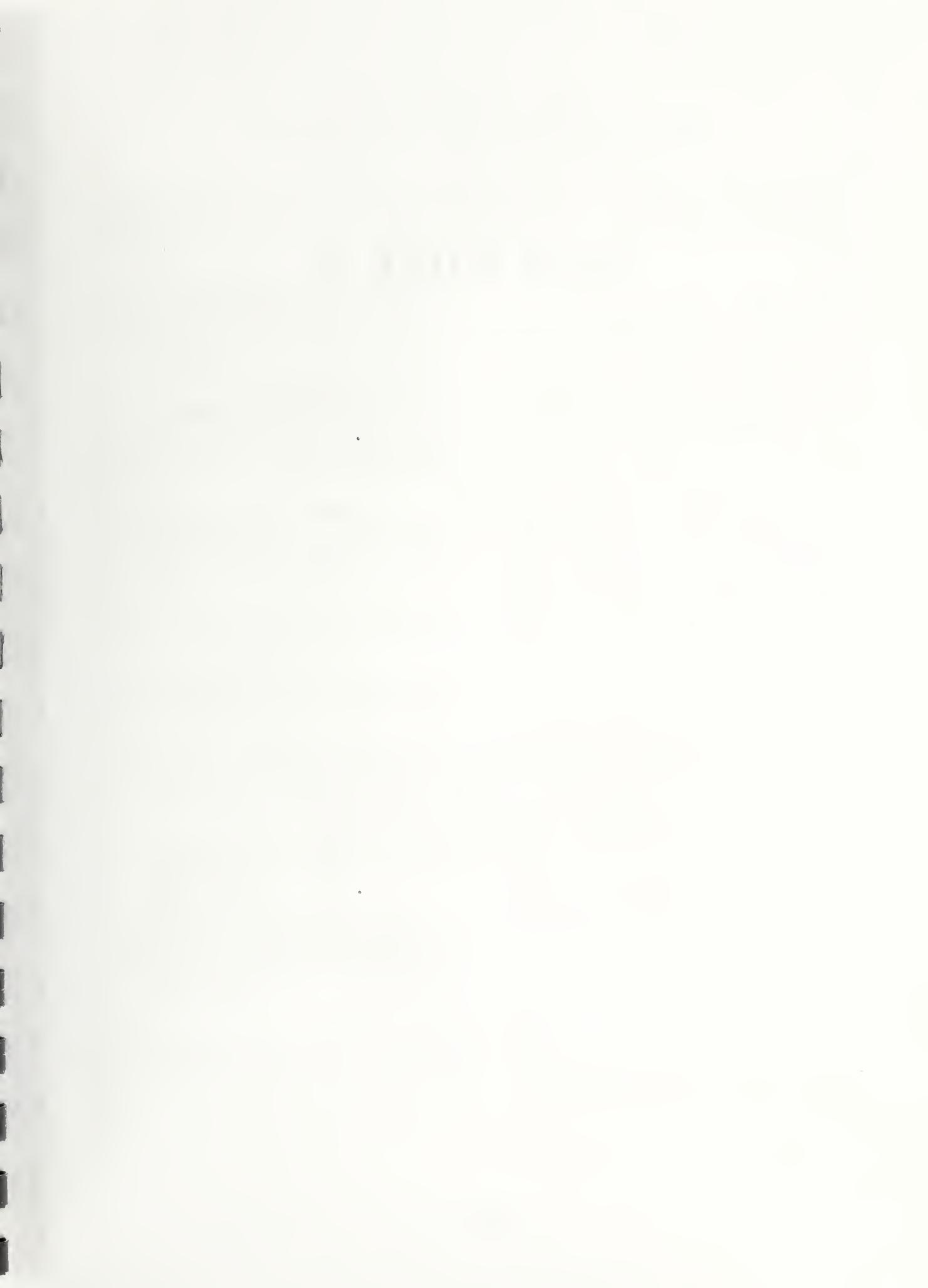
#### DISPOSITION BY REVIEW COUNCIL

If, at the end of the section 12 public inquiry, the public inquiry judge recommends that the Review Council implement a disposition under subsection (3.3) of section 12, it will be necessary for the members of the Review Council to reconvene and determine what disposition they think is appropriate in the circumstances.

In order to make this determination, the Review Council will conduct a meeting, which will be public, and will provide the justice of the peace with an opportunity to make submissions as to the appropriate disposition under subsection (3.3).

If the JPRC is to implement a disposition under subsection (3.3) of section 12, the Review Council may: -

- (a) warn the justice of the peace;
- (b) reprimand the justice of the peace;
- (c) order the justice of the peace to apologize to the complainant or to any other person;
- (d) order the justice of the peace to take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a justice of the peace;
- (e) suspend the justice of the peace with pay, for any period; or
- (f) suspend the justice of the peace without pay, but with benefits, for a period of up to 30 days.



# APPENDIX-F

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## COMPLAINTS PROCEDURES ESTABLISHED UNDER *THE JUSTICES OF THE PEACE ACT,* R.S.O. 1990, CHAPTER J.4, AS AMENDED

Note: This version of the procedures reflects decisions of the Review Council up to December, 2008. For current procedures, please see the Review Council's website at <http://www.ontariocourts.on.ca/jprc/en/policy/>

# APPENDIX - F

## COMPLAINTS PROCEDURES ESTABLISHED UNDER THE JUSTICES OF THE PEACE ACT, AS AMENDED

*Please Note: All statutory references in this document, unless otherwise specifically noted are to the Justices of the Peace Act, R.S.O. 1990, CHAPTER J.4, as amended.*

### THE JUSTICES OF THE PEACE REVIEW COUNCIL

#### Generally

##### NAME AND COMPOSITION

The council known in English as the Justices of the Peace Review Council and in French as Conseil d'évaluation des juges de paix is continued and shall be composed of,

- (a) the Chief Justice of the Ontario Court of Justice, or another judge of the Ontario Court of Justice designated by the Chief Justice;
- (b) the Associate Chief Justice Co-ordinator of Justices of the Peace;
- (c) three justices of the peace appointed by the Chief Justice of the Ontario Court of Justice;
- (d) two judges of the Ontario Court of Justice appointed by the Chief Justice of the Ontario Court of Justice;
- (e) one regional senior justice of the peace appointed by the Chief Justice of the Ontario Court of Justice;
- (f) a lawyer appointed by the Attorney General from a list of three names submitted to the Attorney General by the Law Society of Upper Canada;
- (g) four persons appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General.

**subs. 8 (1) and (3)**

#### QUORUM

Six members of the Review Council, including the chair, constitute a quorum for the purposes of general meetings of the Review Council (i.e., meetings other than complaints committee meetings and hearing panels, which have their own quorum requirements, outlined below). At least half the members present must be judges or justices of the peace.

**subs. 8 (11)**

#### TEMPORARY MEMBERS

The Chief Justice of the Ontario Court of Justice may appoint a judge or a justice of the peace who is not a member of the Review Council to be a temporary member of a complaints committee or a hearing panel in order to deal fully with the matter.

**subs. 8 (10)**

#### MEETINGS

The Review Council may hold its meetings in person or through electronic means, including telephone conferencing and video conferencing.

**subs. 8 (24)**

#### ASSISTANCE TO REVIEW COUNCIL

Whatever staff are considered necessary for the Review Council may be appointed under the *Public Service Act*. The Review Council may also engage persons, including legal counsel, to assist it and its complaints committees and hearing panels.

**subs. 8 (14) and (15)**

#### Functions

The functions of the Review Council are,

- (a) to consider applications for the accommodation of needs made necessary by disability;

# APPENDIX - F

## COMPLAINTS PROCEDURES ESTABLISHED UNDER THE JUSTICES OF THE PEACE ACT, AS AMENDED

- (b) to establish complaints committees from among its members to review and investigate complaints;
- (c) to review and approve standards of conduct which may be established for justices of the peace;
- (d) to deal with continuing education plans for justices of the peace;
- (e) to decide whether a justice of the peace may engage in other remunerative work.

**subs. 8 (2)**

### ACCOMMODATION OF NEEDS

A justice of the peace who believes that he or she is unable, because of a disability, to perform the essential duties of the office unless his or her needs are accommodated may apply to the Review Council for an order.

**s. 5.2**

### REVIEW AND INVESTIGATION OF COMPLAINTS

As soon as possible after receiving a complaint about the conduct of a justice of the peace, the Review Council shall establish a complaints committee and the complaints committee shall investigate the complaint and dispose of the matter.

**s. 11**

### STANDARDS OF CONDUCT

The Associate Chief Justice Co-ordinator of Justices of the Peace may establish standards of conduct for justices of the peace, including a plan for bringing the standards into effect, and shall implement the standards and plan when they have been reviewed and approved by the Review Council.

**subs. 13 (1)**

### APPROVAL OF CONTINUING EDUCATION PLANS

The Associate Chief Justice Co-ordinator of Justices of the Peace shall establish a plan for the continuing education of justices of the peace, and shall

implement the plan when it has been reviewed and approved by the Review Council.

**subs. 14 (1)**

### OTHER REMUNERATIVE WORK

The Review Council shall establish and distribute a procedural document with respect to the review of other remunerative work in which justices of the peace may engage and shall process applications received from justices of the peace in accordance with its procedures.

### *Information provided to the public*

#### INFORMATION ABOUT THE REVIEW COUNCIL

The Review Council shall provide information about itself and about its role in the justice system, in courthouses and elsewhere, including information about how members of the public may obtain assistance in making complaints and, where necessary, the Review Council shall assist members of the public in the preparation of documents for making complaints. The Review Council shall also provide province-wide free telephone access to information about itself and its role in the justice system, including telephone access for the deaf. The information, and the rules of procedure established by the Review Council, shall be provided to the public in both English and French.

**subs. 9 (1), (3) and (4)**

#### INFORMATION ON RULES OF PROCEDURE

The Review Council's rules of procedure that are established for complaints committees and hearing panels shall be made available to the public.

**subs. 10. (1)**

#### USE OF OFFICIAL LANGUAGES OF THE COURTS

The information, and the rules of procedure established by the Review Council, shall be provided to the public in both English and French.

**subs. 10.1 (1)**

# **APPENDIX - F**

## **COMPLAINTS PROCEDURES ESTABLISHED UNDER THE JUSTICES OF THE PEACE ACT, AS AMENDED**

### **ANNUAL REPORT**

The Review Council shall make an annual report, in English and in French, to the Attorney General at the end of each year of its operation. A year for the purposes of reporting will follow the standard calendar year, beginning on January 1st and ending on December 31st. The Annual Report shall provide a report on all complaints received or dealt with during the year, a summary of the complaint, the findings and a statement of the disposition. The Report will not include information that might identify any justice of the peace, any complainant or any witness unless the complaint matter was the subject of a public hearing. The Attorney General shall submit the report to the Lieutenant Governor in Council and it shall then be tabled in the Legislative Assembly after which time it can be released to the public.

**subs. 9 (7) and (8)**

### **COMPLAINTS**

#### **GENERALLY**

Any person may make a complaint to the Review Council about the conduct of a justice of the peace.

**subs. 10.2 (1)**

Complaints to the Review Council must be made in writing.

**subs. 10.2 (2)**

If an allegation of misconduct is made to any other justice of the peace, or to a judge, or to the Attorney General, the recipient of the complaint shall provide the complainant with information about the Review Council and how a complaint may be made and shall refer the person to the Review Council.

**subs. 10.2 (3)**

### **RULES OF PROCEDURE**

The Review Council may establish rules of procedure for complaints committees and for hearing panels and the Review Council shall make the rules available to the public.

**subs. 10 (1)**

### **MEETINGS**

The Review Council may hold its meetings in person or through electronic means, including telephone conferencing and video conferencing.

**subs. 8 (24)**

### **COMPLAINTS COMMITTEES**

#### **TIMELY REPORTING**

As soon as possible after receiving a complaint about the conduct of a justice of the peace, the Review Council shall acknowledge receipt of the complaint and establish a complaints committee to investigate the complaint. The complaints committee shall report to the complainant in a timely manner on its disposition of the complaint.

**sub. 11 (1) and (3)**

#### **COMPOSITION OF COMPLAINTS COMMITTEES**

Eligible members of the Review Council shall serve on complaints committees on a rotating basis. A complaints committee shall be composed of a judge who shall act as chair, a justice of the peace and either a lay member or the lawyer member appointed under s. 8(3)(f). All the members of a complaints committee constitute a quorum. The chair of a complaints committee is entitled to vote.

**subs. 8 (12), 11 (2), (5) and (6)**

#### **MULTIPLE COMPLAINTS**

The Registrar may assign any new complaints of a similar nature against a justice of the peace who already has an open complaint file, or files, to the same complaints committee that is/are investigating the outstanding file(s). This will ensure that the complaints committee members who are investigating a complaint against a particular justice of the peace are aware of the fact that there is a similar complaint, whether from the same complainant or another individual, against the same justice of the peace.

When a justice of the peace is the subject of three complaints within a period of three years, the Registrar may bring that fact to the attention of the complaints

# APPENDIX-F

## COMPLAINTS PROCEDURES ESTABLISHED UNDER THE JUSTICES OF THE PEACE ACT, AS AMENDED

committee for their assessment of whether or not the current complaint(s) should be the subject of advice to the justice of the peace by the Review Council.

the investigation of complaints by complaints committees.

**subs. 11 (10)**

### TEMPORARY MEMBERS

The Chief Justice of the Ontario Court of Justice may appoint a judge or a justice of the peace who is not a member of the Review Council to be a temporary member of a complaints committee to deal fully with the matter.

**subs. 8 (10)**

### COMPLAINT AGAINST MEMBER OF REVIEW COUNCIL

A justice of the peace or regional senior justice of the peace who is a member of the Review Council and who is the subject of a complaint shall not be a member of any complaint committee or hearing panel until the final disposition of the complaint.

**subs. 11 (14)**

### ADMINISTRATIVE PROCEDURES

Detailed information on administrative procedures to be followed by members of complaints committees can be found at pages 6 to 10 of this document.

### Investigation

### RULES OF PROCEDURE

The Review Council may establish rules of procedure for complaints committees and for hearing panels and the Review Council shall make the rules available to the public.

**subs. 10 (1)**

### COMPLIANCE WITH RULES OF PROCEDURE

A complaints committee shall follow the Review Council's rules of procedures in conducting investigations, making recommendations regarding temporary non-assignment and/or reassignment and in making decisions about the disposition of a complaint after their investigation is complete. The Review Council has established the following guidelines and rules of procedure under subsection 10 (1) with respect to

### DISMISSAL OF FRIVOLOUS COMPLAINT

A complaints committee may dismiss a complaint at any time if it is of the opinion that the complaint is frivolous, an abuse of process or outside the jurisdiction of the complaints committee.

**subs. 11 (19)**

### CONDUCTING INVESTIGATION

The complaints committee shall conduct such investigation as it considers appropriate. The Review Council may engage persons, including counsel, to assist it in its investigation. The investigation shall be conducted in private. If the complaint is not dismissed, the justice of the peace who is the subject of the complaint will be asked for a response.

**subs. 8 (15), 11 (7) and (8)**

### RESPONSE TO COMPLAINT

When a complaints committee requires a response from the justice of the peace, the complaints committee will direct the Registrar to invite the justice of the peace to respond to a specific issue or issues raised in the complaint. A copy of the complaint, the transcript and audiotape (if any) and all of the relevant materials on file, as directed by the complaints committee, will be provided to the justice of the peace with the letter requesting the response. A justice of the peace will be given thirty calendar days from the date of the letter asking for a response, to respond to the complaint. If a response is not received within that time, the complaints committee members are advised and a reminder letter will be sent to the justice of the peace by registered mail. If no response is received within ten calendar days from the date of the registered letter, and the complaints committee is satisfied that the justice of the peace is aware of the complaint and has full particulars of the complaint, they will proceed in the absence of a response. Any response made to the complaint by the subject justice of the peace may be considered for any purpose in connection with sections 11.(15) or 11.1 of the *Justices of the Peace Act*.

# APPENDIX - F

## COMPLAINTS PROCEDURES ESTABLISHED UNDER THE JUSTICES OF THE PEACE ACT, AS AMENDED

The response may be referred to in the case summary that will appear in the Review Council's Annual Report.

### PREVIOUS COMPLAINTS

A complaint subcommittee confines its investigation to the complaint before it. The issue of what weight, if any, should be given to previous complaints made against a justice of the peace who is the subject of another complaint before the Justices of the Peace Review Council may be considered by the members of the complaints committee where the Registrar, with the assistance of legal counsel (if deemed necessary by the Registrar), first determines that the prior complaint or complaints are strikingly similar in the sense of similar fact evidence and would assist them in determining whether or not the current incident could be substantiated.

### IN CAMERA "PRELIMINARY" HEARING

Section 4.2, subsections 12 (1) to (3.1) and sections 13, 14, 15 and 22 of the *Statutory Powers Procedure Act* apply to the activities of a complaints committee. These sections give the complaints committee the power to summons witnesses and documentary evidence and administer oaths in complaint file investigations where the complaints committee decides it is warranted.

Section 4.2 of the S.P.P.A. provides a complaint committee with some flexibility regarding quorum on a procedural or interlocutory matter. Such matters may be heard and determined by a panel consisting of one or more members of the complaints committee, assigned by the chair of the committee, rather than requiring the attendance of all three members.

Subsections 12 (1) to (3.1) of the S.P.P.A. gives the complaints committee the power to summons witnesses to give evidence under oath or affirmation and to require the production of documents that may be relevant to the subject-matter of the proceeding.

Section 13 of the S.P.P.A. allows the complaints committee to institute contempt proceedings for persons who, without lawful excuse, default in their attendance or who refuse to take an oath or make an affirmation legally required by the committee to be made.

Section 14 of the S.P.P.A. provides protection against self-incrimination for witnesses who are called before the complaints committee during this stage of the investigation. Section 15 of the S.P.P.A. provides guidance as to the admissibility of evidence and section 22 of the S.P.P.A. gives the complaints committee the power to administer oaths and affirmations.

As noted above, the investigation conducted by the complaints committee shall be conducted in private.

**subs. 11 (8) and (9)**

### ADVICE AND ASSISTANCE

A complaints committee may direct the Registrar or Assistant Registrar to retain or engage persons, including counsel, to assist it in its investigation of a complaint.

**subs. 8 (15)**

### INTERIM RECOMMENDATION TO NOT ASSIGN OR REASSIGN

The complaints committee may recommend to the Regional Senior Judge for the region to which the justice of the peace is assigned, that the justice of the peace who is the subject of a complaint not be assigned work; or be reassigned to another location until the final disposition of a complaint.

Upon receiving the recommendation, the Regional Senior Judge may decide to not assign work to the justice of the peace until the final disposition of the complaint but he or she shall continue to be paid; or the Regional Senior Judge may, with the consent of the justice of the peace, reassign him or her to another location until the final disposition of the complaint.

**subs. 11 (11) and (12)**

### EXCEPTION: CERTAIN COMPLAINTS

If the complaint is against a justice of the peace or regional senior justice of the peace who is a member of the Review Council, any recommendation to not assign or reassign on an interim basis shall be made to the Chief Justice of the Ontario Court of Justice who may decide to not assign work to the justice of the peace or regional senior justice of the peace until the final disposition of the complaint but he or she shall

## APPENDIX-F

### COMPLAINTS PROCEDURES ESTABLISHED UNDER THE JUSTICES OF THE PEACE ACT, AS AMENDED

continue to be paid; or the Chief Justice may, with the consent of the justice of the peace, reassign him or her to another location until the final disposition of a complaint.

**subs. 11 (13)**

#### **CRITERIA FOR INTERIM RECOMMENDATIONS TO SUSPEND OR REASSIGN**

The Justices of the Peace Review Council has established the following criteria and rules of procedure under subsection 10(1) and they are to be used by a complaint subcommittee in making their decision to recommend the appropriate Regional Senior Justice that, until the final disposition of a complaint, the subject of the complaint not be assigned work or that the subject of the complaint be reassigned to another location:

- ◆ where the complaint arises out of a working relationship between the complainant and the justice of the peace and the complainant and the justice of the peace both work at the same court location
- ◆ where allowing the justice of the peace to continue to preside would likely bring the administration of justice into disrepute
- ◆ where the complaint is of sufficient seriousness that there are reasonable grounds for investigation by law enforcement agencies
- ◆ where it is evident to the complaints committee that a justice of the peace is suffering from a disability that cannot be accommodated in accordance with the procedures.

**subs. 11(11) and s. 5.2**

#### **INFORMATION RE: INTERIM RECOMMENDATION**

Where a complaints committee recommends temporarily not assigning or re-assigning a justice of the peace pending the resolution of a complaint, particulars of the factors upon which the complaints committee's recommendations are based shall be provided contemporaneously to the Regional Senior Judge and the subject justice of the peace to assist the

Regional Senior Judge in making his or her decision and to provide the subject justice of the peace with notice of the complaint and the complaints committee's recommendation.

Where a complaints committee proposes to recommend temporarily not assigning or re-assigning a justice of the peace, it may give the justice of the peace an opportunity to be heard on that issue in writing by notifying the justice of the peace by personal service, if possible, or an alternate to personal service, of the reasons therefor, and of the right of the justice of the peace to tender a response. If no response from the justice of the peace is received after 10 calendar days from the date of mailing, the recommendation of an interim order not to assign or reassign may proceed.

#### ***Complaints committee's decision***

When its investigation is complete, the complaints committee shall,

- (a) dismiss the complaint if it is frivolous, an abuse of process or outside the jurisdiction of the complaints committee;
- (b) invite the justice of the peace to attend before the complaints committee to receive advice concerning the issues raised in the complaint or send the justice of the peace a letter of advice concerning the issues raised in the complaint, or both;
- (c) order that a formal hearing into the complaint be held by a hearing panel; or
- (d) refer the complaint to the Chief Justice of the Ontario Court of Justice.

**subs. 11 (15)**

#### ***Criteria for decisions by complaints committees***

##### **A) TO DISMISS THE COMPLAINT**

A complaints committee will dismiss a complaint after reviewing the complaint if, in the complaints committee's opinion, it is frivolous or an abuse of

# APPENDIX - F

## COMPLAINTS PROCEDURES ESTABLISHED UNDER THE JUSTICES OF THE PEACE ACT, AS AMENDED

process or it falls outside the Review Council's jurisdiction because it is a complaint about the exercise of judicial discretion and does not include an allegation of judicial misconduct or, if it does include an allegation of judicial misconduct, the allegation is unproven or the misconduct does not rise to the level of misconduct that requires further action on the part of the Review Council. The complaints committee may also recommend that a complaint be dismissed if, after their investigation, they conclude that the complaint is unfounded.

### B) TO PROVIDE ADVICE TO THE JUSTICE OF THE PEACE

A complaints committee will provide advice to a justice of the peace, in person or by letter, or both, in circumstances where the misconduct complained of does not warrant another disposition, there is some merit to the complaint and the disposition is, in the opinion of the complaints committee, a suitable means of informing the justice of the peace that his/her course of conduct was not appropriate in the circumstances that led to the complaint.

### C) TO ORDER A HEARING

A complaints committee will order a hearing into a complaint where there has been an allegation of judicial misconduct that the complaints committee believes has a basis in fact and which, if believed by the finder of fact, could result in a finding of judicial misconduct.

### D) TO REFER COMPLAINT TO THE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

A complaints committee will refer a complaint to the Chief Justice of the Ontario Court of Justice in circumstances where the misconduct complained of does not warrant another disposition, there is some merit to the complaint and the disposition is, in the opinion of the complaints committee, a suitable means of informing the justice of the peace that his/her course of conduct was not appropriate in the circumstances that led to the complaint. A complaints committee may impose conditions on their

referral to the Chief Justice of the Ontario Court of Justice if, in their opinion, there is some course of action or remedial training of which the subject justice of the peace could take advantage.

### *Compensation*

The complaints committee may recommend that the justice of the peace be compensated for all or part of the costs of legal services, if any, incurred in connection with the investigation. The amount of compensation recommended shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services.

**subs. 11 (16) and (17)**

### *Notice of Decision*

#### DECISION COMMUNICATED

The Review Council shall communicate the decision of the complaints committee to both the complainant and the subject justice of the peace. If the Review Council decides to dismiss the complaint or dispose of the complaint by providing advice to the justice of the peace or if the complaint is referred to the Chief Justice, it will provide brief reasons.

#### REPORT TO REVIEW COUNCIL

The complaints committee shall report to the Review Council on its decision and, except where it orders a formal hearing, shall not identify the complainant or the justice of the peace who is the subject of the complaint in its report.

**subs. 11 (18)**

### HEARING PANELS

#### HEARING PANELS

When a hearing is ordered, the Chair of the Review Council shall establish a hearing panel from among the members of the Review Council to hold a hearing.

**subs. 11.1 (1)**

# APPENDIX - F

## COMPLAINTS PROCEDURES ESTABLISHED UNDER THE JUSTICES OF THE PEACE ACT, AS AMENDED

### COMPOSITION

The hearing panel established for the purpose of holding a hearing shall be composed of:

- 1) a judge who shall chair the panel;
- 2) a justice of the peace; and
- 3) a member who is a judge, a lawyer or a member of the public.

### TEMPORARY MEMBERS

The Chief Justice of the Ontario Court of Justice may appoint a judge or a justice of the peace who is not a member of the Review Council to be a temporary member of a hearing panel in order to deal fully with the matter.

**subs. 8 (10)**

### DISQUALIFICATION

The members of a complaints committee who investigated the complaint shall not participate as members of the hearing panel who deal with the complaint.

**subs. 11 (4)**

### QUORUM

All the members of the hearing panel constitute a quorum and the chair of a hearing panel is entitled to vote.

**subs. 8 (12) and 11.1 (3)**

### COMMUNICATION BY MEMBERS

The members of the hearing panel participating in the hearing shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any party, counsel, agent or other person, unless all the parties and their counsel or agents receive notice and have an opportunity to participate. This prohibition on communication does not preclude the Review Council from engaging legal counsel to assist the hearing panel.

**subs. 11.1 (6) and (7)**

### HEARINGS

#### RULES OF PROCEDURE

The Review Council's rules of procedure established under subsection 10 (1) apply to a hearing held by the Review Council.

**subs. 11.1 (5)**

#### APPLICATION OF S.P.P.A.

The *Statutory Powers Procedure Act* applies to any hearing held by the Review Council with the exception of sections 4 and 28 of that Act. Because of these exceptions, no procedural requirements may be waived, even with the consent of the parties and/or the hearing panel and strict compliance is required with respect to the content of forms, notices and/or documents.

**subs. 11.1 (4)**

#### PARTIES TO THE HEARING

The hearing panel shall determine who are the parties to the hearing.

**subs. 11.1 (8)**

#### MEETINGS

The Review Council may hold its meetings in person or through electronic means, including telephone conferencing and video conferencing.

**subs. 8 (24)**

#### CERTAIN ALLEGATIONS – NON-IDENTIFICATION OF WITNESS

If a complaint involves allegations of sexual misconduct or sexual harassment, the hearing panel shall, at the request of the complainant or of a witness who testifies to having been the victim of such conduct by the justice of the peace, prohibit the publication of information that might identify the complainant or the witness, as the case may be.

**subs. 11.1 (9)**

#### OPEN AND CLOSED HEARINGS AND MEETINGS

Meetings of the Review Council and of its complaints committees shall be held in private but

# APPENDIX - F

## COMPLAINTS PROCEDURES ESTABLISHED UNDER THE JUSTICES OF THE PEACE ACT, AS AMENDED

hearings shall be open to the public unless the hearing panel determines, in accordance with criteria established by the Review Council, that exceptional circumstances exist and the desirability of holding an open hearing is outweighed by the desirability of maintaining confidentiality in which case it may hold all or part of a hearing in private.

### **subs. 9 (6) and 11.1 (4)**

#### **OPEN OR CLOSED HEARINGS - CRITERIA**

The members of the Review Council will consider the following criteria to determine what exceptional circumstances must exist before a decision is made to maintain confidentiality and hold all, or part, of a hearing in private:

- a) where matters involving public or personal security may be disclosed, or
- b) where intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that the hearing be open to the public.

#### **NEW COMPLAINT**

If, during the course of the hearing, additional facts are disclosed which, if communicated to a member of the Review Council, would constitute an allegation of misconduct against a justice of the peace outside of the ambit of the complaint which is the subject of the hearing, the complaint will be assigned to a complaints committee of the Review Council to be investigated as an original complaint. The complaints committee shall be composed of members of the Review Council other than those who compose the panel hearing the complaint.

#### **PROCEDURAL CODE FOR HEARINGS**

#### **PREAMBLE**

These Rules of Procedure apply to all hearings of the Review Council convened pursuant to subsection 11

(10) of the *Justices of the Peace Act* and are established and made public pursuant to subsection 10(1) of the *Justices of the Peace Act*.

These Rules of Procedure shall be liberally construed so as to ensure the just determination of every hearing on its merits. Where matters are not provided for in these Rules, the practice shall be determined by analogy to them.

#### **INTERPRETATION**

1. The words in this code shall, unless the context otherwise indicates, bear the meanings ascribed to them by the *Justices of the Peace Act*.
  - (1) In this code,
    - (a) "Act" shall mean the *Justices of the Peace Act*, as amended.
    - (b) "panel" means the panel conducting a hearing and established pursuant to subsection 11.1 (1) of the *Act*.
    - (c) "respondent" shall mean a justice of the peace in respect of whom an order for a hearing is made.
    - (d) "presenting counsel" means counsel engaged on behalf of the Review Council to prepare and present the case against a respondent.

#### **PRESENTATION OF COMPLAINTS**

2. The Review Council shall, on the making of an order for a hearing in respect of a complaint against a justice of the peace, engage legal counsel for the purposes of
  3. preparing and presenting the case against the respondent.
  4. Legal counsel engaged by the Review Council shall operate independently of the Review Council.
5. The duty of legal counsel engaged under this Part shall not be to seek a particular order against a

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## COMPLAINTS PROCEDURES ESTABLISHED UNDER THE JUSTICES OF THE PEACE ACT, AS AMENDED

respondent, but to see that the complaint against the justice of the peace is evaluated fairly and dispassionately to the end of achieving a just result.

6. For greater certainty, presenting counsel are not to advise the Review Council on any matters coming before it. All communications between presenting counsel and the Review Council shall, where communications are personal, be made in the presence of the respondent and/or counsel for the respondent, and in the case of written communications, such communications shall be copied to the respondents.

### NOTICE OF HEARING

7. A hearing shall be commenced by a Notice of Hearing in accordance with this Part.
8. Presenting counsel shall prepare the Notice of Hearing.
  - (1) The Notice of Hearing shall contain,
    - (a) particulars of the allegations against the respondent;
    - (b) a reference to the statutory authority under which the hearing will be held;
    - (c) a statement of the time and place of the commencement of the hearing;
    - (d) a statement of the purpose of the hearing;
    - (e) a statement that if the respondent does not attend at the hearing, the panel may proceed in the respondent's absence and the respondent will not be entitled to any further notice of the proceeding; and,
  9. Presenting counsel shall cause the Notice of Hearing to be served upon the respondent by personal service or, upon motion to the panel hearing the complaint, an alternative to personal service and shall file proof of service with the Review Council.

### RESPONSE

10. The respondent may serve on presenting counsel and file with the Review Council a response to the allegations in the Notice Hearing.
  - (1) The response may contain full particulars of the facts on which the respondent relies.
  - (2) A respondent may at any time before or during the hearing serve on presenting counsel and file with the Review Council an amended Response.
  - (3) Failure to file a response shall not be deemed to be an admission of any allegations against the respondent.

### DISCLOSURE

11. Presenting counsel shall, before the hearing, forward to the respondent or to counsel for the respondent names and addresses of all witnesses known to have knowledge of the relevant facts and any statements taken from the witness and summaries of any interviews with the witness before the hearing.
12. Presenting counsel shall also provide, prior to the hearing, all non-privileged documents in its possession relevant to the allegations in the Notice of Hearing.
13. The hearing panel may preclude presenting counsel from calling a witness at the hearing if presenting counsel has not provided the respondent with the witness's name and address, if available, and any statements taken from the witness and summaries of any interviews with the witness before the hearing.
14. Part V applies, mutatis mutandis, to any information which comes to presenting counsel's attention after disclosure has been made pursuant to that Part.

### PRE-HEARING CONFERENCE

15. The panel may order that a pre-hearing conference take place before a judge or justice of the

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### COMPLAINTS PROCEDURES ESTABLISHED UNDER THE JUSTICES OF THE PEACE ACT, AS AMENDED

peace who is a member of the Review Council or any other judge of the Ontario Court of Justice but who is not a member of the panel to hear the allegations against the respondent, for the purposes of narrowing the issues and promoting settlement.

#### **THE HEARING**

16. For greater certainty, the respondent has the right to be represented by counsel, or to act on his or her own behalf in any hearing under this procedure.
17. The panel, on application at any time by presenting counsel or by the respondent, may require any person, including a party, by summons, to give evidence on oath or affirmation at the hearing and to produce in evidence at the hearing any documents or things specified by the panel which are relevant to the subject matter of the hearing and admissible at the hearing.
  - (1) A summons issued under this section shall be in the form prescribed by subsection 12(2) of the *Statutory Powers Procedure Act*.
18. The hearing shall be conducted by a panel of members of the Review Council composed of members who have not participated in a complaints committee investigating the complaint.
  - (1) The following guidelines apply to the conduct of the hearing, unless the panel, on motion by a party, or on consent requires otherwise.
    - (a) All testimony shall be under oath or affirmation.
    - (b) Presenting counsel shall commence the hearing by an opening statement, and shall proceed to present evidence in support of the allegations in the Notice of Hearing by direct examination of witnesses.
    - (c) Counsel for the respondent may make an opening statement, either immediately

following presenting counsel's opening statement, or immediately following the conclusion of the evidence presented on behalf of presenting counsel. After presenting counsel has called its evidence, and after the respondent has made an opening statement, the respondent may present evidence.

- (d) All witnesses may be cross-examined by the other party/parties to the hearing and re-examined as required.
- (e) The hearing shall be recorded verbatim and transcribed where requested. Where counsel for the respondent requests, he or she may be provided with a transcript of the hearing within a reasonable time and at no cost.
- (f) Both presenting counsel and the respondent may submit to the panel proposed findings, conclusions, recommendations or draft orders for the consideration of the hearing panel.
- (g) presenting counsel and counsel for the respondent may, at the close of the evidence, make statements summarizing the evidence and any points of law arising out of the evidence, with the order to be determined by the hearing panel.
19. Either party to the hearing may, by motion, not later than 10 calendar days before the date set for commencement of the hearing, bring any procedural or other matters to the hearing panel as are required to be determined prior to the hearing of the complaint.
  - (1) Without limiting the generality of the foregoing, a motion may be made for any of the following purposes:
    - (a) objecting to the jurisdiction of the Review Council to hear the complaint;

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### COMPLAINTS PROCEDURES ESTABLISHED UNDER THE JUSTICES OF THE PEACE ACT, AS AMENDED

- (b) resolving any issues with respect to any reasonable apprehension of bias or institutional bias on the part of the panel;
- (c) objecting to the sufficiency of disclosure by presenting counsel;
- (d) determining any point of law for the purposes of expediting the hearing; or
- (e) determining any claim of privilege in respect of the evidence to be presented at the hearing; or
- (f) any matters relating to scheduling.
- (2) A motion seeking any of the relief enumerated in this section may not be brought during the hearing, without leave of the hearing panel, unless it is based upon the manner in which the hearing has been conducted.
- (3) The hearing panel, may, on such grounds as it deems appropriate, abridge the time for bringing any motion provided for by the pre-hearing rules.
20. The Review Council shall, as soon as is reasonably possible, appoint a time and a place for the hearing of submissions by both sides on any motion brought pursuant to subsection 18(1), and shall, as soon as is reasonably possible, render a decision thereon.

### POST-HEARINGS

#### *Disposition at Hearing*

##### **DISPOSITION**

After completing the hearing, the hearing panel may dismiss the complaint, with or without a finding that it is unfounded or, if it upholds the complaint, it may:

- a) warn the justice of the peace;

- b) reprimand the justice of the peace;
- c) order the justice of the peace to apologize to the complainant or to any other person;
- d) order the justice of the peace to take specified measures such as receiving education or treatment, as a condition of continuing to sit as a justice of the peace;
- e) suspend the justice of the peace with pay, for any period;
- f) suspend the justice of the peace without pay, but with benefits, for a period up to thirty days; or
- g) recommend to the Attorney General that the justice of the peace be removed from office in accordance with section 11.2

**subs. 11.1 (10)**

#### **COMBINATION OF SANCTIONS**

The hearing panel may adopt any combination of the foregoing sanctions except that the recommendation to the Attorney General that the justice of the peace be removed from office will not be combined with any other sanction.

**subs. 11.1 (11)**

#### ***Compensation***

##### **AFTER COMPLAINT DISPOSED OF**

The hearing panel may recommend that the justice of the peace be compensated for all or part of the cost of legal services incurred in connection with the hearing.

**subs. 11.1 (17)**

##### **AMOUNT AND PAYMENT**

The amount of compensation recommended to be paid shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services.

**subs. 11.1 (18)**

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## COMPLAINTS PROCEDURES ESTABLISHED UNDER THE JUSTICES OF THE PEACE ACT, AS AMENDED

### ***Report to Attorney General***

#### **REPORT**

The hearing panel may make a report to the Attorney General about the complaint, investigation, hearing and disposition (subject to any orders made about confidentiality of documents by the Review Council) and the Attorney General may make the report public if he/she is of the opinion that this would be in the public interest.

**subs. 11.1 (19)**

#### **IDENTITY WITHHELD**

If a complainant or witness asked that their identity be withheld during the hearing and an order was made under subsection 11.1 (9), the report to the Attorney General will not identify them.

**subs. 11.1 (20)**

#### **JUSTICE OF THE PEACE NOT TO BE IDENTIFIED**

If an order was made under subsection 11.1 (9) and the hearing, or part thereof, was held in private, and the hearing panel dismisses the complaint with a finding that it was unfounded, the justice of the peace shall not be identified in the report to the Attorney General without his or her consent and the hearing panel shall order that information that relates to the complaint and might identify the justice of the peace shall never be made public without his or her consent.

**subs. 11.1 (21)**

### ***Order to accommodate arising out of a hearing***

If the effect of a disability on the justice of the peace's performance of the essential duties of judicial office is a factor in a complaint, which is either dismissed or disposed of in any manner short of recommending to the Attorney General that the justice of the peace be removed, and the justice of the peace would be able to perform the essential duties of judicial office if his or her needs were accommodated, the Review Council shall order that the justice of the peace's needs be accommodated to the extent necessary to enable him or her to perform those duties.

Such an order to accommodate will not be made if the Review Council is satisfied that making the order would impose undue hardship on the person responsible for accommodating the justice of the peace's needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

The Review Council shall not make an order to accommodate against a person without ensuring that the person has had an opportunity to participate and make submissions.

An order made by the Review Council to accommodate the needs of a justice of the peace binds the Crown.

**subs. 11.1(12), (13), (14), (15) and (16)**

### ***Removal from Office***

#### **ORDER REMOVING JUSTICE OF THE PEACE**

A justice of the peace may be removed from office only by order of the Lieutenant Governor in Council.

**subs. 11.2 (1)**

#### **REMOVAL FOR CAUSE**

The order removing a justice of the peace from office may be made only if,

- a) a complaint about the justice of the peace has been made to the Review Council; and
- b) a hearing panel, after a hearing under section 11.1, recommends to the Attorney General that the justice of the peace be removed on the ground that he or she has become incapacitated or disabled from the due execution of his or her office by reason of,
  - (i) inability, because of a disability, to perform the essential duties of his or her office (if an order to accommodate the justice of the peace's needs would not remedy the inability, or could not be made because it would impose undue hardship on the person responsible for meeting those

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## COMPLAINTS PROCEDURES ESTABLISHED UNDER THE JUSTICES OF THE PEACE ACT, AS AMENDED

needs, or was made but did not remedy the inability),

- (ii) conduct that is incompatible with the due execution of his or her office, or
- (iii) failure to perform the duties of his or her office.

**subs. 11.2 (2)**

### ORDER TO BE TABLED

The order to remove a justice of the peace from office shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen (15) days after the commencement of its next session.

**subs. 11.2 (3)**

## CONFIDENTIALITY AND PROTECTION OF PRIVACY

### Information to Public

#### CONFIRMATION OR DENIAL OF RECEIPT OF COMPLAINT

At any person's request, the Review Council may confirm or deny that a particular complaint has been made to it.

**subs. 10.2 (4)**

#### POLICY OF REVIEW COUNCIL REGARDING CONFIRMATION OR DENIAL

The complaints committee's investigation into a complaint shall be conducted in private in accordance with subsection 11 (8). It is the policy of the Review Council that it will not confirm or deny that a particular complaint has been made to it, as permitted by subsection 10.2 (4), unless the Review Council has determined that there will be a public hearing into the complaint since great damage can be done to the reputation of a justice of the peace and his or her ability to function if information about what could turn out to be an unfounded complaint is released prior to the determination that there is, indeed, some conduct that needs to be dealt with by the Review Council by way of a public hearing.

If a justice of the peace asks if a complaint in relation to his or her conduct exists, the Registrar or Assistant Registrar shall confirm if there is a complaint and provide them with a copy of the Council's procedures but not a copy of the complaint itself.

**subs. 8 (18) and 10.2 (4)**

### ANNUAL REPORT

After the end of each year, the Review Council shall make an annual report to the Attorney General on its affairs with respect to all complaints received or dealt with during the year, a summary of the complaint, the findings and a statement of the disposition, but the report shall not include information that might identify the justice of the peace, the complainant or a witness.

**subs. 9 (7)**

### Investigations and Hearings

#### COMPLAINTS COMMITTEE INVESTIGATION PRIVATE

The investigation into a complaint by a complaints committee shall be conducted in private.

**subs. 11 (8)**

#### ORDER RE: CONFIDENTIALITY OF INFORMATION AND DOCUMENTS

The Review Council, a complaints committee or a hearing panel may order that any information or documents relating to a meeting, investigation or hearing that was not held in public, is/are confidential and shall not be disclosed or made public. Such an order may be made whether the information or documents are in the possession of the Review Council, a complaints committee, a hearing panel, the Attorney General or any other person.

**subs. 8 (18) and (19)**

### EXCEPTION

The foregoing does not apply to information and documents that the *Justices of the Peace Act* requires the Review Council to disclose or that have not been treated as confidential and were not prepared exclusively for the purposes of a Review Council meeting or for an investigation of a complaint or for a hearing.

**subs. 8 (20)**

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## COMPLAINTS PROCEDURES ESTABLISHED UNDER THE JUSTICES OF THE PEACE ACT, AS AMENDED

### **MEETINGS PRIVATE – HEARINGS OPEN**

Meetings of the Review Council and of its complaints committees shall be held in private but hearings shall be open to the public unless the hearing panel determines, in accordance with criteria established by the Review Council, that exceptional circumstances exist and the desirability of holding an open hearing is outweighed by the desirability of maintaining confidentiality in which case it may hold all or part of a hearing in private.

**subs. 9 (6) and 11.1 (4)**

### **CRITERIA TO BE CONSIDERED TO CLOSE HEARING**

The members of the Review Council will consider the following criteria to determine what exceptional circumstances must exist before a decision is made to maintain confidentiality and hold all, or part, of a hearing in private:

- a) where matters involving public security may be disclosed, or
- b) where intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that the hearing be open to the public.

### **CERTAIN ALLEGATIONS – NON-IDENTIFICATION OF WITNESS**

If a complaint involves allegations of sexual misconduct or sexual harassment, the hearing panel shall, at the request of the complainant or of a witness who testifies to having been the victim of such conduct by the justice of the peace, prohibit the publication of information that might identify the complainant or the witness, as the case may be.

**subs. 11.1 (9)**

### **Reports**

#### **REPORT TO REVIEW COUNCIL**

A complaints committee shall report to the Review Council on its decision regarding any complaint in which its investigation has concluded, and except where it orders a formal hearing, it shall not identify the complainant or the justice of the peace who is the subject of the complaint in the report to the Review Council.

**subs. 11 (18)**

#### **REPORT TO ATTORNEY GENERAL**

After a hearing has concluded, the hearing panel may make a report to the Attorney General about the complaint, investigation, hearing and disposition (subject to any orders made about confidentiality of documents by the Review Council) and the Attorney General may make the report public if he/she is of the opinion that this would be in the public interest.

**subs. 11.1 (19)**

#### **IDENTITY WITHHELD IN REPORT**

If a complainant or witness asked that their identity be withheld during the hearing and an order was made under subsection 11.1 (9), the report to the Attorney General will not identify them.

**subs. 11.1 (20)**

#### **JUSTICE OF THE PEACE NOT TO BE IDENTIFIED**

If an order was made under subsection 11.1 (9) and the hearing, or part thereof, was held in private, and the hearing panel dismisses the complaint with a finding that it was unfounded, the justice of the peace shall not be identified in the report to the Attorney General without his or her consent and the hearing panel shall order that information that relates to the complaint and might identify the justice of the peace shall never be made public without his or her consent.

**subs. 11.1 (21)**

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## COMPLAINTS PROCEDURES ESTABLISHED UNDER THE JUSTICES OF THE PEACE ACT, AS AMENDED

### ACCOMMODATION OF NEEDS

#### APPLICATION FOR ORDER

A justice of the peace who believes that he or she is unable, because of a disability, to perform the essential duties of the office unless his or her needs are accommodated may apply to the Review Council for an order that such needs be accommodated.

**subs. 5.2 (1)**

#### DUTY OF REVIEW COUNCIL

If the Review Council finds that a justice of the peace is unable, because of a disability, to perform the essential duties of office unless his or her needs are accommodated, it shall order that the needs of the justice of the peace be accommodated to the extent necessary to enable him or her to perform those duties.

**subs. 5.2 (2)**

#### UNDUE HARDSHIP

Subsection 5.2(2) does not apply if the Review Council is satisfied that making an order would impose undue hardship on the person responsible for accommodating the needs of the justice of the peace, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

**subs. 5.2 (3)**

#### OPPORTUNITY TO PARTICIPATE

The Review Council shall not make an order to accommodate against a person under subsection 5.2(2) without ensuring that the person has had an opportunity to participate and make submissions.

**subs. 5.2 (4)**

#### ORDER BINDS THE CROWN

The order made by the Review Council to accommodate the needs of a justice of the peace binds the Crown.

**subs. 5.2 (5)**

#### RULES OF PROCEDURE AND GUIDELINES

The following are the rules of procedure and guide-

lines established by the Justices of the Peace Review Council for the purpose of the accommodation of needs.

#### APPLICATION IN WRITING

An application for accommodation of needs by a justice of the peace shall be in writing and shall include the following information:

- a description of the needs to be accommodated;
- a description of the essential duties of the justice of the peace's office for which accommodation is required;
- a description of the item and/or service required to accommodate the justice of the peace's needs;
- a detailed medical report from a qualified doctor or other medical specialist (e.g., chiropractor, physiotherapist, etc.) supporting the justice of the peace's application for accommodation;
- the application and supporting materials are inadmissible, without the consent of the applicant, in any investigation or hearing, other than the hearing to consider the question of accommodation;
- disclosure of the application and supporting materials by the Justices of the Peace Review Council to the public is prohibited without the consent of the applicant.

#### ACCOMMODATION SUBCOMMITTEE

On receipt of an application, the Review Council will convene an "accommodation subcommittee" of the Review Council composed of one justice of the peace and one lay member. At its earliest convenience the accommodation subcommittee shall meet with the applicant and with any person against whom the accommodation subcommittee believes an order to accommodate may be required, and retain such

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### COMPLAINTS PROCEDURES ESTABLISHED UNDER THE JUSTICES OF THE PEACE ACT, AS AMENDED

experts and advice as may be required, to formulate and report an opinion to the Review Council in relation to the following matters:

- ◆ the period of time that the item and/or service would be required to accommodate the justice of the peace's needs;
- ◆ the approximate cost of the item and/or service required to accommodate the justice of the peace's needs for the length of time the item and/or service is estimated to be required (i.e., daily, weekly, monthly, yearly).

#### **REPORT OF ACCOMMODATION SUBCOMMITTEE**

The report to the Review Council shall consist of all of the evidence considered by the accommodation subcommittee in formulating its view as to the costs of accommodating the applicant.

If, after meeting with the applicant, the accommodation subcommittee is of the view that the applicant does not suffer from a disability, it shall communicate this fact to the Review Council in its report.

#### **INITIAL CONSIDERATION OF APPLICATION AND REPORT**

The Review Council shall meet, at its earliest convenience, to consider the application and the report of the accommodation subcommittee in order to determine whether or not the application for accommodation gives rise to an obligation under the statute to accommodate the applicant short of undue hardship.

#### **THRESHOLD TEST FOR QUALIFICATION AS DISABILITY**

The Review Council will be guided generally by Human Rights jurisprudence relating to the definition of "disability" for the purposes of determining whether an order to accommodate is warranted.

The Review Council will consider a condition to amount to a disability where it may interfere with the

justice of the peace's ability to perform the essential functions of a justice of the peace's office.

#### **NOTIFICATION OF MINISTER**

If the Review Council is satisfied that the condition meets the threshold test for qualification as a disability and if the Review Council is considering making an order to accommodate same, then the Review Council shall provide a copy of the application for accommodation of needs together with the report of the accommodation subcommittee to the Attorney General, at its earliest convenience. The report of the accommodation subcommittee shall include all of the evidence considered by the accommodation subcommittee in formulating its view as to the costs of accommodating the applicant.

#### **SUBMISSIONS ON UNDUE HARDSHIP**

The Review Council will invite the Minister to make submissions, in writing, as to whether or not any order that the Review Council is considering making to accommodate a justice of the peace's needs will cause "undue hardship" to the Ministry of the Attorney General or any other person affected by the said order to accommodate. The Review Council will view the Minister, or any other person against whom an order to accommodate may be made, as having the onus of showing that accommodating the applicant will cause undue hardship.

In considering whether accommodation of the applicant will cause undue hardship, the Review Council will generally be guided by Human Rights jurisprudence relating to the question whether undue hardship will be caused, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

#### **TIME FRAME FOR RESPONSE**

The Review Council shall request that the Minister respond to its notice of the justice of the peace's application for accommodation within thirty (30) calendar days of the date of receipt of notification from the Review Council. The Minister will, within that time frame, advise the Review Council whether or not the Minister intends to make any

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## COMPLAINTS PROCEDURES ESTABLISHED UNDER THE JUSTICES OF THE PEACE ACT, AS AMENDED

response to the application for accommodation. If the Minister does intend to respond, such response shall be made within sixty (60) days of the Minister's acknowledgement of the notice and advice that the Minister intends to respond. The Review Council will stipulate in its notice to the Minister that an order to accommodate will be made in accordance with the justice of the peace's application and the Review Council's initial determination in the absence of any submission or acknowledgement from the Minister.

### MEETING TO DETERMINE ORDER TO ACCOMMODATE

After receipt of the Minister's submissions with respect to "undue hardship" or the expiration of the time period specified in its notice to the Minister, whichever comes first, the Justices of the Peace Review Council shall meet, at its earliest convenience, to determine the order it shall make to accommodate the justice of the peace's needs. The Review Council will consider the justice of the peace's application and supporting material and submissions made, if any, regarding the question of "undue hardship", before making its determination.

### CHAIR AND QUORUM

The usual rules for composition and quorum apply to meetings for the purposes of considering applications for accommodation. The Chief Justice of the Ontario Court of Justice, or in his or her absence, the Associate Chief Justice Co-ordinator of Justices of the Peace, shall chair meetings held for the purposes of ordering accommodation. Six members of the Review Council, including the chair, constitute a quorum for the purposes of dealing with an application for accommodation of needs. At least half the members present must be judges or justice of the peaces. The chair is entitled to vote, and may cast a second deciding vote if there is a tie.

**subs. 8.(7), (8) and (11)**

### MEETINGS

The Review Council may hold its meetings in person or through electronic means, including telephone conferencing and video conferencing.

**subs. 8.(24)**

### EXPERT ASSISTANCE

The Review Council may engage persons, including counsel, to assist it.

**subs. 8.(15)**

### COPY OF ORDER

A copy of the order made by the Review Council to accommodate a justice of the peace's needs shall be provided to the justice of the peace and to any other person affected by the said order within ten (10) calendar days of the date of the decision being made.

### CONFIDENTIAL RECORDS

The Review Council may order that any information or documents relating to a Review Council meeting that was not held in public are confidential and shall not be disclosed or made public. An order of non-disclosure may be made whether the information or documents are in the possession of the Review Council, the Attorney General or any other person. An order of non-disclosure cannot be made with respect to information and/or documents that the *Justices of the Peace Act* requires the Review Council to disclose or that have not been treated as confidential and were not prepared exclusively for the purposes of a Review Council meeting.

**subs. 8.(18),(19) & (20)**

### SPECIAL CONSIDERATIONS

#### *French-speaking complainants/ justices of the peace*

Complaints against justices of the peace may be made in English or French.

**subs. 10.1 (2)**

A hearing into a complaint by the Review Council shall be conducted in English, but a complainant or witness who speaks French or a justice of the peace who is the subject of a complaint and who speaks French is entitled, on request, to be given, before the hearing, French translations of documents that are written in English and are to be considered at the hearing; to be provided with the assistance of

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### COMPLAINTS PROCEDURES ESTABLISHED UNDER THE JUSTICES OF THE PEACE ACT, AS AMENDED

an interpreter at the hearing; and to be provided with simultaneous interpretation into French of the English portions of the hearing.

**subs. 10.1 (3)**

The Review Council may direct that a hearing of a complaint where a complainant or witness speaks French, or the complained-of justice of the peace speaks French, be conducted bilingually, if the Review Council is of the opinion that it can be properly conducted in that manner.

**subs. 10.1 (4)**

A directive under subsection 10.1(4) may apply to a part of the hearing and, in that case, subsections (6) and (7) below apply with necessary modifications.

**subs. 10.1 (5)**

In a bilingual hearing,

- a) oral evidence and submissions may be given or made in English or French, and shall be recorded in the language in which they are given or made;
- b) documents may be filed in either language;
- c) the reasons for a decision may be written in either language.

**subs. 10.1 (6)**

In a bilingual hearing, if the complainant or the justice of the peace who is the subject of the complaint does not speak both languages, he or she is entitled, on request, to have simultaneous interpretation of any evidence, submissions or discussions spoken in the other language and translation of any document filed or reasons or report written in the other language.

**subs. 10.1 (7)**

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**EXCERPTS FROM THE FORMER JUSTICES OF THE  
PEACE ACT R.S.O. 1990, CHAPTER J.4  
(PRIOR TO AMENDMENTS RESULTING FROM  
THE ACCESS TO JUSTICE ACT, 2006)**

The following excerpt should not be relied upon as the authoritative text. The authoritative text is set out in the official volumes and in office consolidations printed by Publications Ontario.

# APPENDIX - G

## EXCERPTS FROM THE FORMER JUSTICES OF THE PEACE ACT – PRIOR TO AMENDMENTS

### **JUSTICES OF THE PEACE ACT R.S.O. 1990, CHAPTER J.4**

#### **Definitions**

1. In this Act,

“non-presiding justice of the peace” means a person designated as a non-presiding justice of the peace under section 4; (“*juge de paix non-président*”)

“prescribed” means prescribed by the regulations; (“*prescrit*”)

“presiding justice of the peace” means a person designated as a presiding justice of the peace under section 4; (“*juge de paix président*”)

“regulations” means the regulations made under this Act; (“*règlements*”)

“Review Council” means the Justices of the Peace Review Council continued by section 9. (“*Conseil d'évaluation*”) R.S.O. 1990, c. J.4, s. 1; 1994, c. 12, s. 50.

#### **Appointment of justices**

2. (1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint full-time and part-time justices of the peace. R.S.O. 1990, c. J.4, s. 2 (1).

#### **Reappointment as part-time**

(2) The Lieutenant Governor in Council shall not appoint a full-time justice of the peace to be a part-time justice of the peace unless the Review Council recommends the reappointment. R.S.O. 1990, c. J.4, s. 2 (2).

#### **Other work**

(3) After a day to be named by proclamation of the Lieutenant Governor, a justice of the

peace shall not engage in any other remunerative work without the approval of the Review Council. R.S.O. 1990, c. J.4, s. 2 (3).

#### **Removal from office**

8. (1) A justice of the peace may be removed from office only by order of the Lieutenant Governor in Council. R.S.O. 1990, c. J.4, s. 8 (1).

#### **Grounds for removal**

(2) The order may be made only if,

(a) a complaint regarding the justice of the peace has been made to the Review Council; and

(b) the removal is recommended, following an inquiry held under section 12, on the ground that the justice of the peace has become incapacitated or disabled from the due execution of his or her office by reason of,

(i) infirmity,

(ii) conduct that is incompatible with the execution of the duties of his or her office, or

(iii) having failed to perform the duties of his or her office as assigned. R.S.O. 1990, c. J.4, s. 8 (2).

#### **Order to be tabled**

(3) The order shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days after the commencement of the next session. R.S.O. 1990, c. J.4, s. 8 (3).

#### **Review Council**

9. (1) The council known in English as the Justices of the Peace Review Council and in

## APPENDIX - G

### EXCERPTS FROM THE FORMER JUSTICES OF THE PEACE ACT – PRIOR TO AMENDMENTS

French as Conseil d'évaluation des juges de paix is continued and shall be composed of,

- (a) the Chief Justice of the Ontario Court of Justice who shall preside over the Review Council;
- (b) the Associate Chief Justice Co-ordinator of Justices of the Peace;
- (c) the regional senior judge of the Ontario Court of Justice in the region in which the matter being considered by the Council arises;
- (d) a justice of the peace appointed by the Lieutenant Governor in Council; and
- (e) not more than two other persons appointed by the Lieutenant Governor in Council. R.S.O. 1990, c. J.4, s. 9 (1); 1994, c. 12, s. 51; 2002, c. 18, Sched. A, s. 11 (2, 3, 12).

#### Quorum

- (2) A majority of members of the Review Council constitutes a quorum and is sufficient for the exercise of all the jurisdiction and powers of the Review Council. R.S.O. 1990, c. J.4, s. 9 (2).

#### Staff

- (3) Such officers and employees of the Review Council as are considered necessary may be appointed under the *Public Service Act*. R.S.O. 1990, c. J.4, s. 9 (3).

#### Expert assistance

- (4) The Review Council may engage persons, including counsel, to assist it in its investigations. R.S.O. 1990, c. J.4, s. 9 (4).

#### Functions

- 10. (1) The functions of the Review Council are,
  - (a) to consider all proposed appointments and designations of justices of the peace and make reports concerning them to the Attorney General;
  - (b) to receive and investigate complaints against justices of the peace; and
  - (c) dealing with continuing education plans in accordance with subsection 14 (1). R.S.O. 1990, c. J.4, s. 10 (1); 2002, c. 18, Sched. A, s. 11 (4).

#### Liability for damages

- (2) No action or other proceeding for damages shall be instituted against the Review Council or its members or officers or any person acting under its authority for any act done in good faith in the execution or intended execution of its or his or her duty. R.S.O. 1990, c. J.4, s. 10 (2).

#### Investigation of complaints

- 11. (1) When the Review Council receives a complaint against a justice of the peace, it shall take such action to investigate the complaint, including a review of it with the justice of the peace, as it considers advisable. R.S.O. 1990, c. J.4, s. 11 (1).

#### Referral to Associate Chief Justice Co-ordinator of Justices of the Peace

- (2) The Review Council may, if it considers it appropriate to do so, transmit complaints to the Associate Chief Justice Co-ordinator of Justices of the Peace. R.S.O. 1990, c. J.4, s. 11 (2); 1994, c. 12, s. 52; 2002, c. 18, Sched. A, s. 11 (12).

# APPENDIX - G

## EXCERPTS FROM THE FORMER JUSTICES OF THE PEACE ACT – PRIOR TO AMENDMENTS

### Proceedings not public

- (3) The proceedings of the Review Council shall not be public, but it may inform the Attorney General that it has undertaken an investigation and the Attorney General may make that fact public. R.S.O. 1990, c. J.4, s. 11 (3).

### Prohibiting publication

- (4) The Review Council may order that information or documents relating to its investigation not be published or disclosed except as required by law. R.S.O. 1990, c. J.4, s. 11 (4).

### Powers

- (5) The Review Council has all the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the investigation as if it were an inquiry under that *Act*. R.S.O. 1990, c. J.4, s. 11 (5).

### Notice of disposition

- (6) When the Review Council has dealt with a complaint regarding a justice of the peace, it shall inform,
- (a) the person who made the complaint; and
  - (b) the justice of the peace, if the complaint was brought to his or her attention, of its disposition of the complaint. R.S.O. 1990, c. J.4, s. 11 (6).

### Report and recommendations

- (7) The Review Council may report its opinion regarding the complaint to the Attorney General and may recommend,
- (a) that an inquiry be held under section 12;

- (b) that the justice of the peace be compensated for all or part of his or her costs in connection with the investigation. R.S.O. 1990, c. J.4, s. 11 (7).

### Copy to justice

- (8) A copy of the report shall be given to the justice of the peace. R.S.O. 1990, c. J.4, s. 11 (8).

### Right to be heard

- (9) The Review Council shall not make a report unless the justice of the peace was notified of the investigation and given an opportunity to be heard and to produce evidence. R.S.O. 1990, c. J.4, s. 11 (9).

### Publication of report

- (10) The Attorney General may make all or part of the report public, if he or she is of the opinion that it is in the public interest to do so. R.S.O. 1990, c. J.4, s. 11 (10).

### Inquiry

12. (1) The Lieutenant Governor in Council may appoint a provincial judge to inquire into the question whether there has been misconduct by a justice of the peace. 1994, c. 12, s. 53.

### Powers

- (2) The *Public Inquiries Act* applies to the inquiry. R.S.O. 1990, c. J.4, s. 12 (2).

### Report

- (3) The report of the inquiry may recommend that the Lieutenant Governor in Council remove the justice of the peace from office in accordance with section 8, or that the Review Council implement a disposition under subsection (3.3). 1994, c. 12, s. 53.

## APPENDIX - G

### EXCERPTS FROM THE FORMER JUSTICES OF THE PEACE ACT – PRIOR TO AMENDMENTS

#### Same

(3.1)The report may recommend that the justice of the peace be compensated for all or part of the cost of legal services incurred in connection with the inquiry. 1994, c. 12, s. 53.

#### Maximum

(3.2)The amount of compensation recommended under subsection (3.1) shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services. 1994, c. 12, s. 53.

#### Dispositions by Review Council

(3.3)If the report recommends that the Review Council implement a disposition under this subsection, the Council may,

- (a) warn the justice of the peace;
- (b) reprimand the justice of the peace;
- (c) order the justice of the peace to apologize to the complainant or to any other person;
- (d) order the justice of the peace to take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a justice of the peace;
- (e) suspend the justice of the peace with pay, for any period; or
- (f) suspend the justice of the peace without pay, but with benefits, for a period up to 30 days. 1994, c. 12, s. 53.

#### Tabling of report

(4) The report shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days after the commencement of the next session. R.S.O. 1990, c. J.4, s. 12 (4).

#### Continuing education

14. (1) The Associate Chief Justice Co-ordinator of Justices of the Peace shall establish a plan for the continuing education of justices of the peace, and shall implement the plan when it has been reviewed and approved by the Review Council. 2002, c. 18, Sched. A, s. 11 (6).

#### Consultation

(2) In establishing the plan for continuing education, the Associate Chief Justice Co-ordinator of Justices of the Peace shall consult with justices of the peace and with such other persons as he or she considers appropriate. 2002, c. 18, Sched. A, s. 11 (6).



# APPENDIX-H

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EXCERPTS FROM THE  
*JUSTICES OF THE PEACE ACT*  
R.S.O. 1990, CHAPTER J.4, AS AMENDED

The following excerpt should not be relied upon as the authoritative text. The authoritative text is set out in the official volumes and in office consolidations printed by Publications Ontario.

# APPENDIX - H

## EXCERPTS FROM THE JUSTICES OF THE PEACE ACT, AS AMENDED

### **JUSTICES OF THE PEACE ACT R.S.O. 1990, CHAPTER J.4**

#### Definitions

1. In this Act,

“prescribed” means prescribed by the regulations; (“prescrit”)

“regulations” means the regulations made under this Act; (“règlements”)

“Review Council” means the Justices of the Peace Review Council continued by section 8. (“Conseil d'évaluation”) R.S.O. 1990, c. J.4, s. 1; 1994, c. 12, s. 50; 2006, c. 21, Sched. B, s. 1.

### **SECTION 5.2 – Accommodation of Needs**

5.2 (1) A justice of the peace who believes that he or she is unable, because of a disability, to perform the essential duties of the office unless his or her needs are accommodated may apply to the Review Council for an order under subsection (2). 2006, c. 21, Sched. B, s. 6.

#### Duty of Review Council

(2) If the Review Council finds that the justice of the peace is unable, because of a disability, to perform the essential duties of the office unless his or her needs are accommodated, it shall order that the needs of the justice of the peace be accommodated to the extent necessary to enable him or her to perform those duties. 2006, c. 21, Sched. B, s. 6.

#### Undue hardship

(3) Subsection (2) does not apply if the Review Council is satisfied that making an order

would impose undue hardship on the person responsible for accommodating the needs of the justice of the peace, considering the cost, outside sources of funding, if any, and health and safety requirements, if any. 2006, c. 21, Sched. B, s. 6.

#### Opportunity to participate

(4) The Review Council shall not make an order under subsection (2) against a person without ensuring that the person has had an opportunity to participate and make submissions. 2006, c. 21, Sched. B, s. 6.

#### Crown bound

(5) The order binds the Crown. 2006, c. 21, Sched. B, s. 6.

#### Review Council

8. (1) The council known in English as the Justices of the Peace Review Council and in French as Conseil d'évaluation des juges de paix is continued. 2006, c. 21, Sched. B, s. 7.

#### Functions

- (2) The functions of the Review Council are,
- to consider applications under section 5.2 for the accommodation of needs;
  - to establish complaints committees from among its members to review and investigate complaints under section 11;
  - to review and approve standards of conduct under section 13;
  - to deal with continuing education plans under section 14; and

## APPENDIX - H

### EXCERPTS FROM THE JUSTICES OF THE PEACE ACT, AS AMENDED

(e) to decide whether a justice of the peace may engage in other remunerative work. 2006, c. 21, Sched. B, s. 7.

ensuring overall gender balance shall be recognized. 2006, c. 21, Sched. B, s. 7.

#### Composition

(3) The Review Council is composed of,

(a) the Chief Justice of the Ontario Court of Justice, or another judge of the Ontario Court of Justice designated by the Chief Justice;

(b) the Associate Chief Justice Co-ordinator of Justices of the Peace;

(c) three justices of the peace appointed by the Chief Justice of the Ontario Court of Justice;

(d) two judges of the Ontario Court of Justice appointed by the Chief Justice of the Ontario Court of Justice;

(e) one regional senior justice of the peace appointed by the Chief Justice of the Ontario Court of Justice;

(f) a lawyer appointed by the Attorney General from a list of three names submitted to the Attorney General by the Law Society of Upper Canada;

(g) four persons appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General. 2006, c. 21, Sched. B, s. 7.

#### Criteria

(4) In the appointment of members under clause (3) (g), the importance of reflecting, in the composition of the Review Council as a whole, Ontario's linguistic duality and the diversity of its population and

#### Term of office

(5) The members who are appointed under clauses (3) (f) and (g) hold office for four-year terms and are eligible for reappointment. 2006, c. 21, Sched. B, s. 7.

#### Staggered terms

(6) Despite subsection (5), the following applies to the first appointments to the Review Council:

1. The lawyer appointed under clause (3) (f) holds office for a six-year term.

2. One of the persons appointed under clause (3) (g) holds office for a six-year term and one holds office for a two-year term. 2006, c. 21, Sched. B, s. 7.

#### Chair

(7) The Chief Justice of the Ontario Court of Justice or, in his or her absence, the Associate Chief Justice Co-ordinator of Justices of the Peace, shall chair all meetings of the Review Council. 2006, c. 21, Sched. B, s. 7.

#### Same

(8) The chair is entitled to vote and may cast a second deciding vote if there is a tie. 2006, c. 21, Sched. B, s. 7.

#### Vacancies

(9) If a vacancy occurs among the members appointed under clause (3) (f) or (g), a new member may be appointed under the applicable provision for the remainder of the term. 2006, c. 21, Sched. B, s. 7.

## APPENDIX - H

### EXCERPTS FROM THE JUSTICES OF THE PEACE ACT, AS AMENDED

#### Temporary members

- (10) The Chief Justice of the Ontario Court of Justice may appoint a judge or a justice of the peace who is not a member of the Review Council to be a temporary member of a complaints committee or hearing panel in order to deal fully with the matter. 2006, c. 21, Sched. B, s. 7.

#### Quorum

- (11) The following quorum rules apply:
1. Six members, including the chair, constitute a quorum.
  2. At least half the members present must be judges or justices of the peace. 2006, c. 21, Sched. B, s. 7.

#### Voting by chair

- (12) The chair of a complaints committee established under subsection 11 (1) or a hearing panel established under subsection 11.1 (1) is entitled to vote. 2006, c. 21, Sched. B, s. 7.

#### Disqualification

- (13) The members of the Review Council who were members of a complaints committee dealing with a complaint shall not participate in a hearing of the complaint under section 11.1. 2006, c. 21, Sched. B, s. 7.

#### Employees

- (14) Such employees as are considered necessary for the proper conduct of the affairs of the Review Council may be appointed under Part III of the *Public Service of Ontario Act*, 2006. 2006, c. 35, Sched. C, s. 56 (3).

#### Expert assistance

- (15) The Review Council may engage persons, including counsel, to assist it and its complaints committees and hearing panels. 2006, c. 21, Sched. B, s. 7.

#### Support services

- (16) The Review Council shall provide support services, including initial orientation and continuing education, to enable its members to participate effectively, devoting particular attention to the needs of the members who are neither judges nor lawyers and administering a part of its budget for support services separately for that purpose. 2006, c. 21, Sched. B, s. 7.

#### Same

- (17) The Review Council shall administer a part of its budget for support services separately for the purpose of accommodating the needs of any members who have disabilities. 2006, c. 21, Sched. B, s. 7.

#### Confidential records

- (18) The Review Council, a complaints committee or a hearing panel may order that any information or documents relating to a meeting, investigation or hearing that was not held in public are confidential and shall not be disclosed or made public. 2006, c. 21, Sched. B, s. 7.

#### Same

- (19) Subsection (18) applies whether the information or documents are in the possession of the Review Council, a complaints committee, a hearing panel, the Attorney General or any other person. 2006, c. 21, Sched. B, s. 7.

## APPENDIX - H

### EXCERPTS FROM THE JUSTICES OF THE PEACE ACT, AS AMENDED

#### Exceptions

(20) Subsection (18) does not apply to information and documents,

- (a) that this Act requires the Review Council to disclose; or
- (b) that have not been treated as confidential and were not prepared exclusively for the purposes of a Review Council meeting or for an investigation of a complaint or for a hearing. 2006, c. 21, Sched. B, s. 7.

#### Personal liability

(21) No action or other proceeding for damages shall be instituted against the Review Council or any of its members or employees or any person acting under the authority of the Review Council, a complaints committee or hearing panel for any act done in good faith in the execution or intended execution of any power or duty of the Review Council, a complaints committee or a hearing panel or for any neglect or default in the exercise or performance in good faith of such power or duty. 2006, c. 21, Sched. B, s. 7.

#### Testimonial immunity

(22) No member or employee of the Review Council and no person acting under its authority may be compelled to give evidence in any administrative or civil proceeding in relation to anything done or omitted to be done in carrying out the purposes of this Act. 2006, c. 21, Sched. B, s. 7.

#### Remuneration

(23) The members who are appointed under clauses (3) (f) and (g) are entitled to receive

the daily remuneration that is fixed by the Lieutenant Governor in Council. 2006, c. 21, Sched. B, s. 7.

#### Meetings

(24) The Review Council may hold its meetings in person or through electronic means, including telephone conferencing and video conferencing. 2006, c. 21, Sched. B, s. 7.

#### OTHER DUTIES OF REVIEW COUNCIL

##### Provision of information to public

9. (1) The Review Council shall provide, in courthouses and elsewhere, information about itself and about its role in the justice system, including information about how members of the public may obtain assistance in making complaints. 2006, c. 21, Sched. B, s. 7.

##### Same

(2) In providing information, the Review Council shall emphasize the elimination of cultural and linguistic barriers and the accommodation of the needs of persons with disabilities. 2006, c. 21, Sched. B, s. 7.

##### Assistance to public

(3) Where necessary, the Review Council shall arrange for the provision of assistance to members of the public in the preparation of documents for making complaints. 2006, c. 21, Sched. B, s. 7.

##### Telephone access

(4) The Review Council shall provide province-wide free telephone access, including

# APPENDIX - H

## EXCERPTS FROM THE JUSTICES OF THE PEACE ACT, AS AMENDED

telephone access for the deaf, to information about itself and its role in the justice system. 2006, c. 21, Sched. B, s. 7.

### Persons with disabilities

- (5) To enable persons with disabilities to participate effectively in the complaints process, the Review Council shall ensure that their needs are accommodated, at the Council's expense, unless it would impose undue hardship on the Council to do so, considering the cost, outside sources of funding, if any, and health and safety requirements, if any. 2006, c. 21, Sched. B, s. 7.

### Open and closed hearings and meetings

- (6) Meetings of the Review Council and of its complaints committees shall be held in private but, subject to subsection 11.1 (4), hearings under section 11.1, shall be open to the public. 2006, c. 21, Sched. B, s. 7.

### Annual report

- (7) After the end of each year, the Review Council shall make an annual report to the Attorney General on its affairs, in English and French, including, with respect to all complaints received or dealt with during the year, a summary of the complaint, the findings and a statement of the disposition, but the report shall not include information that might identify the justice of the peace, the complainant or a witness. 2006, c. 21, Sched. B, s. 7.

### Tabling

- (8) The Attorney General shall submit the annual report to the Lieutenant Governor in Council and shall then table the report in the Assembly. 2006, c. 21, Sched. B, s. 7.

### Rules

- 10.** (1) The Review Council may establish rules of procedure for complaints committees and for hearing panels and the Review Council shall make the rules available to the public. 2006, c. 21, Sched. B, s. 8.

### Legislation Act, 2006

- (2) Part III (Regulations) of the *Legislation Act, 2006* does not apply to rules established by the Review Council. 2006, c. 21, Sched. B, s. 9.

### SPPA, s. 28

- (3) Section 28 of the *Statutory Powers Procedure Act* does not apply to the Review Council. 2006, c. 21, Sched. B, s. 8.

### Use of official languages of courts

- 10.1** (1) The information provided under subsections 9 (1), (3) and (4) and any rules established under subsection 10 (1) shall be made available in English and French. 2006, c. 21, Sched. B, s. 8.

### Same

- (2) Complaints against justices of the peace may be made in English or French. 2006, c. 21, Sched. B, s. 8.

### Same

- (3) A hearing under section 11.1 shall be conducted in English, but a complainant or witness who speaks French or a justice of the peace who is the subject of a complaint and who speaks French is entitled, on request,

- (a) to be given, before the hearing, French translations of documents that are written in English and are to be considered at the hearing;

## APPENDIX - H

### EXCERPTS FROM THE JUSTICES OF THE PEACE ACT, AS AMENDED

- (b) to be provided with the assistance of an interpreter at the hearing; and
- (c) to be provided with simultaneous interpretation into French of the English portions of the hearing. 2006, c. 21, Sched. B, s. 8.

#### Bilingual hearing

- (4) The Review Council may direct that a hearing to which subsection (3) applies be conducted bilingually, if it is of the opinion that it can be properly conducted in that manner. 2006, c. 21, Sched. B, s. 8.

#### Part of hearing

- (5) A direction under subsection (4) may apply to a part of the hearing and, in that case, subsections (6) and (7) apply with necessary modifications. 2006, c. 21, Sched. B, s. 8.

#### Same

- (6) In a bilingual hearing,
  - (a) oral evidence and submissions may be given or made in English or French, and shall be recorded in the language in which they are given or made;
  - (b) documents may be filed in either language; and
  - (c) the reasons for a decision may be written in either language. 2006, c. 21, Sched. B, s. 8.

#### Same

- (7) In a bilingual hearing, if the complainant or the justice of the peace who is the subject of the complaint does not speak both languages, he or she is entitled, on request, to have simultaneous interpretation of any

evidence, submissions or discussions spoken in the other language and translation of any document filed or reasons written in the other language. 2006, c. 21, Sched. B, s. 8.

#### Complaint re justice of the peace

- (10.2) (1) Any person may make a complaint to the Review Council about the conduct of a justice of the peace. 2006, c. 21, Sched. B, s. 8.

#### Same

- (2) A complaint to the Review Council must be made in writing. 2006, c. 21, Sched. B, s. 8.

#### Same

- (3) If a complaint about the conduct of a justice of the peace is made to any other justice of the peace or to a judge or the Attorney General, the other justice of the peace or the judge or the Attorney General, as the case may be, shall provide the person making the complaint with information about the Review Council's role in the justice system and about how a complaint may be made, and shall refer the person to the Review Council. 2006, c. 21, Sched. B, s. 8.

#### Information re complaint

- (4) At any person's request, the Review Council may confirm or deny that a particular complaint has been made to it. 2006, c. 21, Sched. B, s. 8.

## INVESTIGATIONS

#### Complaints committees

- (11. (1) As soon as possible after receiving a complaint about the conduct of a justice of the peace, the Review Council shall establish a complaints committee and the complaints

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### EXCERPTS FROM THE JUSTICES OF THE PEACE ACT, AS AMENDED

committee shall investigate the complaint and dispose of the matter as provided in subsection (15). 2006, c. 21, Sched. B, s. 10.

#### Composition

- (2) A complaints committee shall be composed of,
  - (a) a judge who shall chair the complaints committee;
  - (b) a justice of the peace; and
  - (c) a member who is neither a judge nor a justice of the peace. 2006, c. 21, Sched. B, s. 10.

#### Timely reporting to complainant

- (3) The complaints committee shall report in a timely manner to the complainant that it has received the complaint and it shall report in a timely manner to the complainant on its disposition of the matter. 2006, c. 21, Sched. B, s. 10.

#### Disqualification

- (4) The members of a complaints committee who investigate a complaint shall not participate in a hearing in respect of the complaint. 2006, c. 21, Sched. B, s. 10.

#### Rotation of members

- (5) The eligible members of the Review Council shall all serve on complaints committees on a rotating basis. 2006, c. 21, Sched. B, s. 10.

#### Quorum

- (6) All the members of a complaints committee constitute a quorum. 2006, c. 21, Sched. B, s. 10.

#### Investigation

- (7) The complaints committee shall conduct such investigation as it considers appropriate. 2006, c. 21, Sched. B, s. 10.

#### Investigation private

- (8) The investigation shall be conducted in private. 2006, c. 21, Sched. B, s. 10.

#### Powers of complaints committee

- (9) Section 4.2, subsections 12 (1) to (3.1) and sections 13, 14, 15 and 22 of the *Statutory Powers Procedure Act* apply to the activities of a complaints committee. 2006, c. 21, Sched. B, s. 10.

#### Rules of procedure

- (10) The rules of procedure established under subsection 10 (1) apply to the activities of a complaints committee. 2006, c. 21, Sched. B, s. 10.

#### Interim recommendations

- (11) The complaints committee may recommend to a regional senior judge that, until the final disposition of a complaint,

- (a) the justice of the peace who is the subject of a complaint not be assigned work; or
- (b) the justice of the peace who is the subject of a complaint be reassigned to another location. 2006, c. 21, Sched. B, s. 10.

#### Same

- (12) The recommendation shall be made to the regional senior judge appointed for the region to which the justice of the peace is assigned and the regional senior judge may,

## APPENDIX - II

### EXCERPTS FROM THE JUSTICES OF THE PEACE ACT, AS AMENDED

- (a) decide to not assign work to the justice of the peace until the final disposition of the complaint but he or she shall continue to be paid; or
- (b) with the consent of the justice of the peace, reassign him or her to another location until the final disposition of the complaint. 2006, c. 21, Sched. B, s. 10.

#### Exception: certain complaints

(13) If the complaint is against a justice of the peace or regional senior justice of the peace who is a member of the Review Council, any recommendation under subsection (11) in connection with the complaint shall be made to the Chief Justice of the Ontario Court of Justice, who may,

- (a) decide to not assign work to the justice of the peace or regional senior justice of the peace until the final disposition of the complaint but he or she shall continue to be paid; or
- (b) with the consent of the justice of the peace or regional senior justice of the peace, reassign him or her to another location until the final disposition of the complaint. 2006, c. 21, Sched. B, s. 10.

#### Same

(14) A justice of the peace or regional senior justice of the peace who is a member of the Review Council and who is the subject of a complaint shall not be a member of any complaints committee or hearing panel until the final disposition of the complaint. 2006, c. 21, Sched. B, s. 10.

#### Complaints committee's decision

- (15) When its investigation is complete, the complaints committee shall,
  - (a) dismiss the complaint if it is frivolous, an abuse of process or outside the jurisdiction of the complaints committee;
  - (b) invite the justice of the peace to attend before the complaints committee to receive advice concerning the issues raised in the complaint or send the justice of the peace a letter of advice concerning the issues raised in the complaint, or both;
  - (c) order that a formal hearing into the complaint be held by a hearing panel; or
  - (d) refer the complaint to the Chief Justice of the Ontario Court of Justice. 2006, c. 21, Sched. B, s. 10.

#### Compensation

(16) The complaints committee may recommend that the justice of the peace be compensated for all or part of the cost of legal services incurred in connection with the investigation. 2006, c. 21, Sched. B, s. 10.

#### Maximum

(17) The amount of compensation recommended under subsection (16) shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services. 2006, c. 21, Sched. B, s. 10.

# APPENDIX - H

## EXCERPTS FROM THE JUSTICES OF THE PEACE ACT, AS AMENDED

### Report

- (18) The complaints committee shall report to the Review Council on its decision and, except where it orders a formal hearing, it shall not identify the complainant or the justice of the peace who is the subject of the complaint in the report. 2006, c. 21, Sched. B, s. 10.

### Frivolous complaints, etc.

- (19) Without restricting the powers of a complaints committee under clause (15) (a), a complaints committee may dismiss a complaint at any time if it is of the opinion that the complaint is frivolous, an abuse of process or outside the jurisdiction of the complaints committee. 2006, c. 21, Sched. B, s. 10.

## HEARINGS

### Hearing panels

- 11.1** (1) When a hearing is ordered under subsection 11 (15), the chair of the Review Council shall establish a hearing panel from among the members of the Review Council to hold a hearing in accordance with this section. 2006, c. 21, Sched. B, s. 10.

### Composition

- (2) A hearing panel shall be composed of,
- a judge who shall chair the panel;
  - a justice of the peace; and
  - a member who is a judge, a lawyer or a member of the public. 2006, c. 21, Sched. B, s. 10.

### Quorum

- (3) All the members of the panel constitute a quorum. 2006, c. 21, Sched. B, s. 10.

### Application of SPPA

- (4) The *Statutory Powers Procedure Act*, except sections 4 and 28, applies to the hearing. 2006, c. 21, Sched. B, s. 10.

### Rules of procedure

- (5) The rules of procedure established under subsection 10 (1) apply to the hearing. 2006, c. 21, Sched. B, s. 10.

### Communication re subject-matter of hearing

- (6) The members of the panel participating in the hearing shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any party, counsel, agent or other person, unless all the parties and their counsel or agents receive notice and have an opportunity to participate. 2006, c. 21, Sched. B, s. 10.

### Exception

- (7) Subsection (6) does not preclude the Review Council from engaging counsel to assist the panel in accordance with subsection 8 (15). 2006, c. 21, Sched. B, s. 10.

### Parties

- (8) The panel shall determine who are the parties to the hearing. 2006, c. 21, Sched. B, s. 10.

### Orders prohibiting publication

- (9) If the complaint involves allegations of sexual misconduct or sexual harassment, the panel shall, at the request of a complainant or of a witness who testifies to having been

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### EXCERPTS FROM THE JUSTICES OF THE PEACE ACT, AS AMENDED

the victim of such conduct by the justice of the peace, prohibit the publication of information that might identify the complainant or witness, as the case may be. 2006, c. 21, Sched. B, s. 10.

#### Dispositions

(10) After completing the hearing, the panel may dismiss the complaint, with or without a finding that it is unfounded or, if it upholds the complaint, it may,

- (a) warn the justice of the peace;
- (b) reprimand the justice of the peace;
- (c) order the justice of the peace to apologize to the complainant or to any other person;
- (d) order that the justice of the peace take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a justice of the peace;
- (e) suspend the justice of the peace with pay, for any period;
- (f) suspend the justice of the peace without pay, but with benefits, for a period up to 30 days; or
- (g) recommend to the Attorney General that the justice of the peace be removed from office in accordance with section 11.2. 2006, c. 21, Sched. B, s. 10.

#### Same

(11) The panel may adopt any combination of the dispositions set out in clauses (10) (a) to (f). 2006, c. 21, Sched. B, s. 10.

#### Disability

(12) If the panel finds that the justice of the peace is unable, because of a disability, to perform the essential duties of the office, but would be able to perform them if his or her needs were accommodated, it shall order that the justice of the peace's needs be accommodated to the extent necessary to enable him or her to perform those duties. 2006, c. 21, Sched. B, s. 10.

#### Application of subs. (12)

(13) Subsection (12) applies if,

- (a) the effect of the disability on the justice of the peace's performance of the essential duties of the office was a factor in the complaint; and
- (b) the panel dismisses the complaint or makes a disposition under clauses (10) (a) to (f). 2006, c. 21, Sched. B, s. 10.

#### Undue hardship

(14) Subsection (12) does not apply if the panel is satisfied that making an order would impose undue hardship on the person responsible for accommodating the justice of the peace's needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any. 2006, c. 21, Sched. B, s. 10.

#### Opportunity to participate

(15) The panel shall not make an order under subsection (12) against a person without ensuring that the person has had an opportunity to participate and make submissions. 2006, c. 21, Sched. B, s. 10.

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### EXCERPTS FROM THE JUSTICES OF THE PEACE ACT, AS AMENDED

#### Crown bound

- (16) An order made under subsection (12) binds the Crown. 2006, c. 21, Sched. B, s. 10.

#### Compensation

- (17) The panel may recommend that the justice of the peace be compensated for all or part of the cost of legal services incurred in connection with the hearing. 2006, c. 21, Sched. B, s. 10.

#### Maximum

- (18) The amount of compensation recommended under subsection (17) shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services. 2006, c. 21, Sched. B, s. 10.

#### Report to Attorney General

- (19) The panel may make a report to the Attorney General about the complaint, investigation, hearing and disposition, subject to any order made under subsection 8 (18), and the Attorney General may make the report public if of the opinion that this would be in the public interest. 2006, c. 21, Sched. B, s. 10.

#### Non-identification of persons

- (20) A complainant or witness at whose request an order was made under subsection (9) shall not be identified in the report. 2006, c. 21, Sched. B, s. 10.

#### Continuing publication ban

- (21) If an order was made under subsection (9) and the panel dismisses the complaint with a finding that it was unfounded, the

justice of the peace shall not be identified in the report without his or her consent and the panel shall order that information that relates to the complaint and might identify the justice of the peace shall never be made public without his or her consent. 2006, c. 21, Sched. B, s. 10.

#### Transitional

- (22) A complaint against a justice of the peace that is made to the Review Council before the day this section comes into force, and considered at a meeting of the Review Council before that day, shall be dealt with in accordance with sections 11 and 12 of this Act, as they read immediately before that day. 2006, c. 21, Sched. B, s. 10.

#### Removal from office

- 11.2** (1) A justice of the peace may be removed from office only by order of the Lieutenant Governor in Council. 2006, c. 21, Sched. B, s. 10.

#### Removal for cause

- (2) The order may be made only if,
- (a) a complaint about the justice of the peace has been made to the Review Council; and
  - (b) a hearing panel, after a hearing under section 11.1, recommends to the Attorney General that the justice of the peace be removed on the ground that he or she has become incapacitated or disabled from the due execution of his or her office by reason of,
    - (i) inability, because of a disability, to perform the essential duties of his or her office, if an order to

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### EXCERPTS FROM THE JUSTICES OF THE PEACE ACT, AS AMENDED

accommodate the justice of the peace's needs would not remedy the inability, or could not be made because it would impose undue hardship on the person responsible for meeting those needs, or was made but did not remedy the inability,

- (ii) conduct that is incompatible with the due execution of his or her office, or
- (iii) failure to perform the duties of his or her office. 2006, c. 21, Sched. B, s. 10.

#### Order to be tabled

- (3) The order shall be laid before the Legislative Assembly if it is in session or, if not, within 15 days after the commencement of the next session. 2006, c. 21, Sched. B, s. 10.

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### SECTION 13 – Standards of conduct

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- 13. (1) The Associate Chief Justice Co-ordinator of Justices of the Peace may establish standards of conduct for justices of the peace, including a plan for bringing the standards into effect, and shall implement the standards and plan when they have been reviewed and approved by the Review Council. 2006, c. 21, Sched. B, s. 12.

#### Duty of Associate Chief Justice Co-ordinator of Justices of the Peace

- (2) The Associate Chief Justice Co-ordinator of Justices of the Peace shall ensure that any standards of conduct are made available to the public, in English and French,

when they have been approved by the Review Council. 2006, c. 21, Sched. B, s. 12.

#### Goals

- (3) The following are among the goals that the Associate Chief Justice Co-ordinator of Justices of the Peace may seek to achieve by establishing standards of conduct for justices of the peace:
  1. Recognizing the independence of justices of the peace.
  2. Maintaining the high quality of the justice system and ensuring the efficient administration of justice.
  3. Enhancing equality and a sense of inclusiveness in the justice system.
  4. Ensuring that conduct of justices of the peace is consistent with the respect accorded to them.
  5. Emphasizing the need to ensure the on-going development of justices of the peace and the growth of their social awareness through continuing education. 2006, c. 21, Sched. B, s. 12.

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### SECTION 14 – Continuing education

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- 14. (1) The Associate Chief Justice Co-ordinator of Justices of the Peace shall establish a plan for the continuing education of justices of the peace, and shall implement the plan when it has been reviewed and approved by the Review Council. 2002, c. 18, Sched. A, s. 11 (6).

## **APPENDIX - H**

### **EXCERPTS FROM THE JUSTICES OF THE PEACE ACT, AS AMENDED**

#### **Consultation**

- (2) In establishing the plan for continuing education, the Associate Chief Justice Co-ordinator of Justices of the Peace shall consult with justices of the peace and with such other persons as he or she considers appropriate. 2002, c. 18, Sched. A, s. 11 (6).

#### **Plan to be made public**

- (3) The Associate Chief Justice Co-ordinator of Justices of the Peace shall ensure that the plan for continuing education is made available to the public, in English and French, when it has been approved by the Review Council. 2002, c. 18, Sched. A, s. 11 (6).

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### **SECTION 19 – Other remunerative work**

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- 19. A justice of the peace shall not engage in any other remunerative work without the approval of the Review Council. 2006, c. 21, Sched. B, s. 17.

# APPENDIX-I

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REPORT OF THE COMMISSION OF INQUIRY  
INTO THE CONDUCT OF  
HIS WORSHIP BENJAMIN SINAI  
A JUSTICE OF THE PEACE

# APPENDIX - I

## REPORT OF A JUDICIAL INQUIRY RE: HIS WORSHIP BENJAMIN SINAI, A JUSTICE OF THE PEACE

### REPORT OF THE COMMISSION OF INQUIRY INTO THE CONDUCT OF HIS WORSHIP BENJAMIN SINAI A JUSTICE OF THE PEACE

#### INTRODUCTION:

Effective June 27, 2007, I was appointed, pursuant to s. 12(1) of the *Justices of the Peace Act*, R.S.O. 1990, c. J. 4, to inquire into the question of whether there has been misconduct on the part of Justice of the Peace Benjamin Sinai and, if so, to make a recommendation to the Lieutenant Governor in Council that Benjamin Sinai be removed from his office or to recommend that the Justices of the Peace Review Council implement a disposition in s. 12(1) of the *Justices of the Peace Act*, R.S.O. 1990, c. J. 4.

This commission of inquiry was appointed on the recommendation of the Justices of the Peace Review Council. The issues, which form the subject matter of this commission, include the following:

#### (1) In-Court Conduct:

Was there misconduct on the part of Justice of the Peace Sinai on the 6th of September, 2005 when he advised Brian Lashbrook to plead guilty to various traffic offences and failed to afford him an opportunity to address the facts or the appropriate sanction to be imposed and then convicted him and adopted the prosecutor's submissions on sentence?

#### (2) Out-of-Court Conduct:

Was there misconduct, which occurred in May 2006 after Justice of the Peace Sinai realized that the Justices of the Peace Review Council was commencing an investigation into the above-noted matter? Justice of the Peace Sinai responded to an inquiry from Regional Senior Justice of

the Peace Jane E. Forth by stating to her Administrative Assistant, Lorna Laforest, that he would be unable to render two reserved judgments unless Justice of the Peace Forth could make the Justices of the Peace Review Council investigations "go away". It is also alleged that Justice of the Peace Sinai declined to speak to the Regional Senior Justice of the Peace or send her a letter clarifying his position with respect to rendering judgments in the outstanding matters.

The hearing relating to both the in-court and out-of-court allegations commenced on January 15, 2008. At the opening of the inquiry an agreed statement of facts was filed before me by commission counsel and counsel for Justice of the Peace Sinai. The commission heard one witness, Lorna Laforest, and then heard submissions from both counsel.

#### STATUTORY AUTHORITY:

Section 11, *Justices of the Peace Act*, R.S.O. 1990, c. J. 4:

##### "Investigation of complaints

11. (1) When the Review Council receives a complaint against a justice of the peace, it shall take such action to investigate the complaint, including a review of it with the justice of the peace, as it considers advisable. R.S.O. 1990, c. J. 4, s. 11(1).

##### Referral to Associate Chief Justice Co-ordinator of Justices of the Peace

(2) The Review Council may, if it considers it appropriate to do so, transmit complaints

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to the Associate Chief Justice Co-ordinator of Justices of the Peace. R.S.O. 1990, c. J. 4, s. 11(2); 1994, c. 12, s. 52; 2002, c. 18, Sched. A, s. 11(12).

### Proceedings not public

(3) The proceedings of the Review Council shall not be public, but it may inform the Attorney General that it has undertaken an investigation and the Attorney General may make that fact public. R.S.O. 1990, c. J. 4, s. 11(3).

### Prohibiting publication

(4) The Review Council may order that information or documents relating to its investigation not be published or disclosed except as required by law. R.S.O. 1990, c. J. 4, s. 11(4).

### Powers

(5) The Review Council has all the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the investigation as if it were an inquiry under that Act. R.S.O. 1990, c. J. 4, s. 11(5).

### Notice of Disposition

(6) When the Review Council has dealt with a complaint regarding a justice of the peace, it shall inform,

- (a) the person who made the complaint; and,
- (b) the justice of the peace, if the complaint was brought to his or her attention,

of its disposition of the complaint, R.S.O. 1990, c. J. 4, s. 11(6).

### Report and recommendations

(7) The Review Council may report its opinion regarding the complaint to the Attorney General and may recommend,

- (a) that an inquiry be held under section 12;
- (b) that the justice of the peace be compensated for all or part of his or her costs in connection with the investigation. R.S.O. 1990, c. J. 4, s. 11(7).

### Copy to justice

(8) A copy of the report shall be given to the justice of the peace, R.S.O. 1990, s. J. 4, s. 11(8).

### Right to be heard

(9) The Review Council shall not make a report unless the justice of the peace was notified of the investigation and given an opportunity to be heard and to produce evidence. R.S.O. 1990, c. J. 4, s. 11(9).

### Publication of report

(10) The Attorney General may make all or part of the report public, if he or she is of the opinion that it is in the public interest to do so. R.S.O. 1990, c. J. 4, s. 11(10).

12.(1) The Lieutenant Governor in Council may appoint a provincial judge to inquire into the question whether there has been misconduct by a justice of the peace."

Accordingly, on January 15, 2008, this inquiry commenced and completed pursuant to s. 12 of the *Justices of the Peace Act*.

## BACKGROUND OF JUSTICE OF THE PEACE BENJAMIN SINAI:

Pursuant to the agreed statement of facts, it is clear that Benjamin Sinai was appointed as a justice of the peace by Order in Council, dated June 28, 1984. Since that date, he performed the full range of functions required of any

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justice of the peace, including appearances in assignment court, intake court, bail court and *Provincial Offences* court. Justice of the Peace Sinai has presided throughout his career exclusively in the Northeast Region and is at the present time 66 years of age.

On March 16, 2006, Dr. J. O'Donnell wrote a letter indicating that it was his medical opinion that Justice of the Peace Benjamin Sinai should be off work due to illness from Monday, March 13, 2006 for an indefinite period of time. Dr. O'Donnell indicated that Justice of the Peace Sinai suffered from angina, anxiety, coronary artery disease, and post-herpetic neuralgia. Dr. O'Donnell indicated in his letter the various medications that Justice of the Peace Sinai was taking at the time.

Doctor O'Donnell further indicated that it was Justice of the Peace Sinai's opinion that the stress he was under caused pain, which in turn distracted him and caused his lack of concentration. As a result of his lack of concentration, Justice of the Peace Sinai felt that he had "flawed judgment".

On July 26, 2006, Dr. O'Donnell completed a report for Great-West Life Assurance Company entitled Attending Physician's Initial Long Term Disability Benefit Statement. In that report, Dr. O'Donnell indicates that Justice of the Peace Sinai's symptoms first began to appear in 1991. This report indicated a similar diagnosis that was contained in Dr. O'Donnell's March 16, 2006 letter. In the section relating to comments, the following is written:

"Prognosis for longevity is actually poor.  
Very disabled by angina and post-herpetic neuralgia. Unable to perform his duties."

In a letter from his counsel, Dennis W. Fenton, dated August 4, 2006, to the Justices

of the Peace Review Council, the following comment appears:

"(Justice of the Peace Sinai) is presently in the process, with the assistance of his physician, Dr. O'Donnell, of applying for Long Term Disability. Part of the difficulties which His Worship has experienced for some considerable time is that his ability to act judicially has been significantly impacted by the stress and anxiety occasioned by his serious physical and emotional health problems. Shortly said, he has not been able to function in a fashion that he felt was "judicially" normal."

Having carefully reviewed the agreed statement of facts filed before me, this is the only information that I have concerning Justice of the Peace Sinai's health issues and his prognosis. In submissions, counsel for Justice of the Peace Sinai indicated that his client wished to return to work.

According to the letter of Dr. O'Donnell dated March 16, 2006, Justice of the Peace Sinai has been away from his employment since March 13, 2006. On November 21, 2006, Great-West Life wrote to Justice of the Peace Sinai indicating that his claim for disability benefits would not be payable. However, I was advised by his counsel during his submissions at this inquiry that Justice of the Peace Sinai appealed that decision successfully and disability benefits are being paid at the present time.

### STANDARD OF PROOF:

It is agreed by both counsel that the same standard for conduct is applicable to justices and justices of the peace.

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In my view, having regard to my role as commissioner in these proceedings, I must scrutinize the evidence carefully and apply the highest standard that can be applied in relation to a civil matter without approaching the criminal standard of proof beyond a reasonable doubt. In *Hanes v. The Wawanesa Mutual Insurance Company*, 1963 S.C.R. 154, the Supreme Court of Canada determined that, although a high degree of proof is required in matters such as these, I am still entitled to make my decision on the balance of probabilities.

In *Baiter v. Baiter*, 1950 2 All E.R. 458 Lord Denning stated:

"In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard. Many great judges have said that, in proportion as the crime is enormous, so ought the proof to be clear. So also in civil cases. The case may be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject matter. A civil court, when considering a charge of fraud, will naturally require a higher degree of probability than that which it would require if considering whether negligence were established. It does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature, but still it does require a degree of probability which is commensurate with the occasion."

I accept that I must scrutinize the evidence before me with that standard of proof in mind.

### IN-COURT CONDUCT:

On September 6, 2005, Justice of the Peace Sinai dealt with a case involving an individual by the name of Brian Lashbrook. Mr. Lashbrook was charged with the offences of speeding, failing to have a current validation permit and driving a motor vehicle while a Class G-1 licence holder not being accompanied by a qualified driver.

The following is taken from a transcript regarding Mr. Lashbrook's matters:

"MR. SCHARGER: The next matter is Brian Lashbrook, 11, 12, 13 on the list. Brian Lashbrook. Are you Brian Lashbrook, sir?

MR. LASHBROOK: Yes.

MR. SCHARGER: First appearance, Your Worship.

THE COURT: Brian, what do you want to do with these?

MR. LASHBROOK: I don't know what the options are.

THE COURT: I cannot hear you.

MR. LASHBROOK: I don't know what my options are.

THE COURT: Well, you have come into court without knowing anything. Do you expect us to give you a whole education on what is to transpire?

MR. LASHBROOK: I've never been in court before.

THE COURT: But you did not find out from anybody what you were supposed to do prior to getting here?

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MR. LASHBROOK: No.

THE COURT: So in that case, I am just going to tell you suppose you plead guilty and we get rid of it this morning.

MR. LASHBROOK: Okay.

THE COURT: Do you want to plead guilty on all matters?

MR. LASHBROOK: Yes.

THE COURT: Are you ready to proceed on all matters?

MR. SCHARGER: Your Worship, if it pleases the court we probably don't need to proceed against all matters. If the matter is held down momentarily I can sort things out with Mr. Lashbrook.

THE COURT: Sir, on the first break you will have an opportunity to talk with the prosecutor. Since you have elected to plead guilty to dispose of all these, consideration will be brought to your attention on that."

It would appear that later in the morning Mr. Lashbrook reappears before Justice of the Peace Sinai and, after arraignment, pleads guilty to speeding and not being with a qualified driver, possessing only a G-1 Class licence. The prosecutor relied on the facts contained in the information that was read to Mr. Lashbrook and the following occurred:

"THE COURT: Sir, the facts do you agree to?

MR. LASHBROOK: I do.

THE COURT: Do you want to say anything to the court concerning the facts, sir?

MR. LASHBROOK: Just that...

THE COURT: The facts being admitted, conviction is entered. Charge number 2.

MR. SCHARGER: Withdraw that.

THE COURT: Drive motor vehicle no current validated permit, withdrawn at this time. Submission on penalty for counts 1 and 3 please.

MR. SCHARGER: Yes sir, with respect to speeding, the fine is calculated by the *Highway Traffic Act* as \$280.00, plus applicable court surcharges. That is the request for that matter. With respect to the class G1 licence, it is governed by the general penalty section, so anywhere from \$60.00 to \$500.00. \$150.00 would suffice, Your Worship. By way of explanation, this individual is pleading guilty on his first appearance and he has no driving record to speak of. Thank you.

THE COURT: Brian, do you want to say anything before any fines are imposed?

MR. LASHBROOK: No.

THE COURT: Are you working?

MR. LASHBROOK: Yes, I am.

#### S E N T E N C I N G

J. P. Sinai, Orally: On the speeding charge, \$280.00, plus costs, plus surcharge. How much time do you need to pay this fine, sir?

MR. LASHBROOK: Two months.

THE COURT: 60 days. On count number 3, \$150.00, plus costs, plus surcharge. How much time do you need?

MR. LASHBROOK: Two months.

THE COURT: 60 days. Thank you sir for your time. You may go."

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Clearly, when Mr. Lashbrook's matters are called, he is asking Justice of the Peace Sinai for some assistance because, as Mr. Lashbrook states: "I don't know what my options are." and "I've never been in court before."

In response to that, Justice of the Peace Sinai states: "Well, you have come into court without knowing anything. Do you expect us to give you a whole education on what is to transpire?" And, further, "But you did not find out from anybody what you were supposed to do prior to getting here?" and then, finally, "So in that case, I am just going to tell you suppose you plead guilty and we get rid of it this morning."

It is my view that these comments by Justice of the Peace Sinai are contrary to what the public expects of a judicial officer and bring the administration of justice into disrepute.

In *R. v. McGibbon*, (1988), 45 C.C.C. (3d) 334, the Ontario Court of Appeal stated:

"Consistent with the duty to ensure that the accused has a fair trial, the trial judge is required within reason to provide assistance to the unrepresented accused, to aid him in the proper conduct of his defence, and to guide him throughout the trial in such a way that his defence is brought out with its full force and effect. How far the trial judge should go in assisting the accused in such matters as the examination and cross-examination of witnesses must, of necessity, be a matter of discretion."

In *R. v. Tran*, 2001 O.J. No.3056, the Ontario Court of Appeal cites with approval *R. v. Darlyn*, 1946 88 C.C.C. 269 (B.C.C.A.) as follows:

"There are two traditional common law rules which have become so firmly

embedded in our judicial system that a conviction is very difficult to sustain on appeal if they are not observed. The first is, that if the accused is without counsel, the court shall extend its helping hand to guide him throughout the trial in such a way that his defence, or any defence the proceedings may disclose, is brought out to the jury with its full force and effect. The second is, that it is not enough that the verdict in itself appears to be correct, if the course of the trial has been unfair to the accused. An accused is deemed to be innocent, it is in point to emphasize, not until he is found guilty, but until he is found guilty according to law."

In my opinion, Justice of the Peace Sinai did not fulfill the responsibility he owed to Mr. Lashbrook when Mr. Lashbrook appeared before him on September 6, 2005. Instead of helping Mr. Lashbrook, he chastised him for not knowing court procedure and suggested that he just plead guilty "to get rid of" the charges outstanding against him.

I am further concerned that, after the prosecutor relied on the facts as contained in the information before the court, Justice of the Peace Sinai asked Mr. Lashbrook if he had anything to say about the facts and it would appear that Mr. Lashbrook did indeed have some comment about the facts but Justice of the Peace Sinai interrupted him and registered a conviction on the facts presented.

The prosecutor was given an opportunity to submit what he believed the proper penalty should be and once he did so, Justice of the Peace Sinai asked Mr. Lashbrook, "Brian, do you want to say anything before any fines are imposed?"

Although Justice of the Peace Sinai gave Mr. Lashbrook the opportunity to make some

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### REPORT OF A JUDICIAL INQUIRY RE: HIS WORSHIP BENJAMIN SINAI, A JUSTICE OF THE PEACE

comments, it was never explained to Mr. Lashbrook what submissions he could make at this stage of the hearing.

Further to Justice of the Peace Sinai's conduct at this trial, Regional Senior Justice of the Peace Jane Forth received a letter from an enforcement officer on September 5, 2005. Although this enforcement officer wished to remain anonymous, he expressed concern about Justice of the Peace Sinai's recommendation that Brian Lashbrook plead guilty.

Regional Senior Justice of the Peace Forth wrote to the Justices of the Peace Review Council on October 18, 2005, advising them of the complaint and enclosed a transcript. On January 3, 2006, the Justices of the Peace Review Council wrote to Justice of the Peace Sinai requesting that he review the transcript and provide the Review Council with his written comments regarding how he dealt with Mr. Lashbrook, an unrepresented accused.

On January 24, 2006, Justice of the Peace Sinai responded to the Justices of the Peace Review Council. Justice of the Peace Sinai responded in part as follows:

"...I am not at all all that pleased with myself on what transpired on different cases that day. I admit I made some pretty bad mistakes and I am sorry to hear that I rubbed someone the wrong way and I am sorry to have put anyone through any discomfort levels."

Justice of the Peace Sinai further indicates in his letter that he tried to show respect for Mr. Lashbrook and that he felt he dealt with Mr. Lashbrook in a sincere and fair manner. Justice of the Peace Sinai then indicated that since he was a significant distance from home when he heard the Lashbrook matter, he was

likely trying to conclude his list as quickly as possible. He then complained that he had too little time to travel, calling this travel time, "windshield time". He ended his letter by promising to concentrate on court time and not travel time in the future and apologized for his mistakes.

It is clear that justices of the peace are very important judicial officers. Although they are not required to have formal legal training before their appointment, their decisions regarding bail, the issuance of search warrants and *Provincial Offence* matters seriously impact the liberty and privacy of those who appear before them. Indeed, for the vast majority of society who have contact with the court system, their first and only contact would be to appear before a justice of the peace.

As Justice Hogan stated in the Commission of Inquiry into the conduct of His Worship Justice of the Peace Leonard Blackburn:

"It is the justices of the peace who preside in court on matters such as parking tags, speeding tickets, by-law infractions, and *Provincial Offences*. These are the day to day type of "judicial" issues that confront most people. It is therefore quite probable that a great number of the public will form judgments of our justice system based on their experiences with a justice of the peace."

In an article entitled "Judges on Trial – A Study of the Appointment and Accountability of the English Judiciary" by Shimon Shetreet, it is stated at page 282:

"Judges could not discharge their functions without complete public confidence. If a judge behaved in a way which seriously impaired public confidence in him,

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he would no longer be able to administer justice and therefore should leave the bench. The test of public confidence was expressed in Canada by The Honourable I. C. Rand who was appointed a commissioner to investigate the conduct of a judge. In a report recommending the removal of the judge the commissioner proposed this test for determining unfitness in a judge. ‘Would the conduct fairly determined in the light of all circumstances lead fair-minded persons acting normally, expressing in fact in light public opinion to attribute such a deficit of normal character that the discharge of the duties of the office thereafter would be suspect? Has it destroyed unquestioning confidence of uprightness, or moral integrity, of honesty and decision, the elements of public honour? If so, then unfitness has been demonstrated?’

Having carefully considered Justice of the Peace Sinai’s conduct in relation to the Lashbrook matter, I am completely satisfied that his actions constitute misconduct, as set out in s. 12(1) of the *Justices of the Peace Act*. Justice of the Peace Sinai had an obligation to assist Mr. Lashbrook, who clearly had no understanding of the court process. Instead of assisting him, he advised him to plead guilty and chastised him for not being more knowledgeable about his options before the court. Further, Justice of the Peace Sinai did not allow Mr. Lashbrook to comment on the facts, as alleged by the prosecution and did not provide Mr. Lashbrook with sufficient information to properly deal with the matter of disposition.

Counsel, on behalf of Justice of the Peace Sinai, submitted to me that I should consider the fact that the complaint in relation to Mr. Lashbrook was not made by Mr. Lashbrook but by an enforcement officer who wished to

remain anonymous. I have considered that submission but find that Justice of the Peace Sinai’s actions amount to misconduct, notwithstanding who made the actual complaint. It is my view that the conduct of Justice of the Peace Sinai must be assessed on its own notwithstanding who made the complaint.

### OUT-OF-COURT CONDUCT:

On May 1, 2006, Regional Senior Justice of the Peace Forth wrote a letter to Justice of the Peace Sinai noting that he had been off work since March 13, 2006. Regional Senior Justice of the Peace Forth inquired whether Justice of the Peace Sinai would be in a position to render judgment, in two outstanding cases before him.

The only witness to testify before me at this inquiry was Lorna Laforest. She testified that she was the administrative assistant for Regional Senior Justice of the Peace Forth since June of 1994. Ms. Laforest testified that she typed the letter, dated May 1, 2006.

At one point, Justice of the Peace Sinai contacted her and spoke with her for approximately 20 minutes. Ms. Laforest is familiar with Justice of the Peace Sinai as a result of her duties as administrative assistant. Justice of the Peace Sinai told her he was sick and discussed with her his stress level and some personal issues. Justice of the Peace Sinai indicated that the stress he felt was being caused by the outstanding review board matter and that if Regional Senior Justice of the Peace Forth could make this review board in Timmins “go away”, his stress would also go away. Justice of the Peace Sinai, according to Ms. Laforest, also said that Regional Senior Justice of the Peace Forth should be told to talk to “her friend” and make the review board go away and at that point Justice of the Peace Sinai would come

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back to work. Justice of the Peace Sinai told Ms. Laforest to tell Regional Senior Justice of the Peace Forth this information. As a result, Ms. Laforest did report the conversation to Regional Senior Justice of the Peace Forth.

On May 31, 2006, Regional Senior Justice of the Peace Forth wrote a second letter to Justice of the Peace Sinai. It was requested in this letter that Justice of the Peace Sinai respond in writing to advise whether he would be in a position to render his outstanding judgments. Regional Senior Justice of the Peace Forth indicated that she wished a response by June 15, 2006. Justice of the Peace Sinai never responded, as required.

Shortly after the letter of May 31, 2006 was sent, Ms. Laforest again spoke to Justice of the Peace Sinai.

In that conversation, Justice of the Peace Sinai indicated that he could not make the decisions on his outstanding judgments because his doctor had indicated to him that he was not to render decisions while he was off on sick leave. Justice of the Peace Sinai indicated further that he cannot write letters and that Ms. Laforest should have reference to his doctor's letter.

In cross-examination, Ms. Laforest indicated that Justice of the Peace Sinai seemed to talk in circles. One had to listen carefully to understand what he was saying. She felt that it was "hit and miss".

In regard to the outstanding judgments, neither of these judgments was ever rendered by Justice of the Peace Sinai. One case involving the North Bay General Hospital was apparently a somewhat complex case, which required ten days of evidence before Justice of the Peace Sinai. This case was rescheduled and completed by another judicial officer, according to Ms. Laforest's evidence, but according to her

recollection the other outstanding case was not rescheduled.

On June 7, 2006, Associate Chief Justice and Co-ordinator of Justices of the Peace Donald Ebbs wrote a letter to the Justices of the Peace Review Council filing a further formal complaint of misconduct in relation to Justice of the Peace Sinai. This additional formal complaint related to Justice of the Peace Sinai's failure to respond to Regional Senior Justice of the Peace Forth's requests and Justice of the Peace Sinai's comments to Lorna Laforest.

On July 6, 2006, a letter was sent to Justice of the Peace Sinai asking for a response to Associate Chief Justice Ebb's letter.

On August 4, 2006, a response was sent by Dennis W. Fenton, counsel to Justice of the Peace Sinai, indicating that Justice of the Peace Sinai never wished to articulate his concerns, as described by Associate Chief Justice Ebbs in his letter. Indeed, counsel indicated in his letter that Justice of the Peace Sinai was attempting to convey his frustration and may have mistakenly left Ms. Laforest with the wrong impression.

Having considered very carefully the evidence given by Ms. Laforest, I find her to be an entirely credible witness, who gave her evidence in a clear and forthright manner. I accept entirely her evidence that Justice of the Peace Sinai stated that if Regional Senior Justice of the Peace Forth could talk to "her friend" and make the review board "go away", his stress level would decrease and he may be able to return to work.

It is clear in my mind that the standard of conduct for judges found in a document entitled "Principles of Judicial Office" is also the standard of conduct for justices of the peace in this province. It confirms the status of justices

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of the peace as members of the judiciary and confirms their status as judicial officers.

As stated in the publication from the Canadian Judicial Council:

“Ethical Principles For Judges: An independent judiciary is indispensable to impartial justice under law. Judges should, therefore, uphold and exemplify judicial independence in both its individual and institutional aspects.”

That being said, in my view, it is equally important in our judicial system for all judicial officers to be accountable, not only for their actions in court but for their actions out of court as well.

At Commentary 5 in “Ethical Principles for Judges”, it states:

“Given the independence accorded judges, they share a collective responsibility to promote high standards of conduct. The rule of law and the independence of the judiciary depend primarily upon public confidence. Lapses and questionable conduct by judges tend to erode that confidence. As Professor Nolan points out, judicial independence and judicial ethics have a symbiotic relationship. Public acceptance of and support for court decisions depends upon public confidence in the integrity and independence of the bench. This, in turn, depends upon the judiciary upholding high standards of conduct.”

In my mind, part of a judicial officer's accountability requires that he respond in a timely fashion to complaints that are made regarding his conduct. I believe that also includes the requirement that timely responses must be made to inquiries by a judicial officer's

supervisor. In this case, Justice of the Peace Sinai never responded directly to Regional Senior Justice of the Peace Forth, despite her insistence that he do so. Indeed, he never even showed the courtesy to speak with her personally, having spoken on two occasions to her Administrative Assistant, Lorna Laforest. He chose instead to rely on his illness, which he indicated would not allow him to write letters.

I find this conduct to be concerning and incompatible with the requirement that a judicial officer be accountable for his actions.

However, I am even more concerned about his comments to Lorna Laforest, indicating that if Regional Senior Justice of the Peace Forth and “her friend” could make the review board “go away”, he would return to work since his stress level would be relieved.

Therefore, it is my opinion that the actions of Justice of the Peace Sinai, in his comments to Lorna Laforest and his dealings with Regional Senior Justice of the Peace Forth, clearly constitute misconduct.

### CONCLUSION:

Having found misconduct by Justice of the Peace Sinai in both the in-court and out-of-court issues, I must now determine what recommendation should be made. Section 12 of the *Justices of the Peace Act* reads as follows:

“12.(1) The Lieutenant Governor in Council may appoint a provincial judge to inquire into the question whether there has been misconduct by a justice of the peace.

#### Powers

(2) *The Public Inquiries Act* applies to the inquiry. R.S.O. 1990, c. J. 4, s. 12(2).

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### Report

(3) The report of the inquiry may recommend that the Lieutenant Governor in Council remove the justice of the peace from office in accordance with section 8, or that the Review Council implement a disposition under subsection (3.3). 1994, c. 12, s. 53.

### Same

(3.1) The report may recommend that the justice of the peace be compensated for all or part of the cost of legal services incurred in connection with the inquiry. 1994, c. 12, s. 53.

### Maximum

(3.2) The amount of compensation recommended under subsection (3.1) shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services. 1994, c. 12, s. 53.

### Dispositions by Review Council

(3.3) If the report recommends that the Review Council implement a disposition under this subsection, the Council may,

- (a) warn the justice of the peace;
- (b) reprimand the justice of the peace;
- (c) order the justice of the peace to apologize to the complainant or to any other person;
- (d) order the justice of the peace to take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a justice of the peace;
- (e) suspend the justice of the peace without pay, for any period; or

(f) suspend the justice of the peace without pay, but with benefits, for a period up to 30 days. 1994, c. 12, s. 53."

Counsel on behalf of Justice of the Peace Sinai submits that even if I find misconduct on the part of Justice of the Peace Sinai, this misconduct is not so grave that a recommendation for removal from office should be made by me. Such a recommendation can only be made if it is determined that Justice of the Peace Sinai has become incapacitated or disabled from the due execution of his office by reason of conduct that is incompatible with the execution of his duties or his office. Counsel submits that I should consider the range of sanctions in s. 12 short of a recommendation for removal.

It is important to note that I have very little information about Justice of the Peace Sinai, other than what I have indicated earlier in this decision. Justice of the Peace Sinai did not testify before me and as I understand it, he is still off on Long Term Disability but hopes to return to work at one point. There is nothing before me indicating when Justice of the Peace Sinai could return to work nor is there any information about the treatment or counselling he has taken, if any, or the prognosis for the illnesses, which have been described by his doctor, Dr. O'Donnell. Additionally, no letters of reference have been filed on his behalf nor have witnesses been called to attest to his good character.

In considering the appropriate disposition, I am clearly mindful that the purpose of judicial discipline in the *Justices of the Peace Act* is to rectify misconduct and restore public confidence in the administration of justice.

However, in my view, the conduct of Justice of the Peace Sinai, both in court and out of

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court considered separately and cumulatively, is incompatible with the due execution of the duties of the office of the Justice of the Peace, and has brought the administration of justice into disrepute.

Therefore, the only disposition that can properly deal with this matter is a recommendation that Justice of the Peace Sinai be removed from office. Only this disposition would restore public confidence in the administration of justice in my mind.

In dealing with Mr. Lashbrook, Justice of the Peace Sinai clearly failed to recognize the obligations that he owed to an unrepresented individual, who was clearly appearing in court for the first time. Justice of the Peace Sinai did not respond as required to the letter of his supervisor and instead called her administrative assistant suggesting that he would return to work if complaints against him would "go away". I find this conduct entirely incompatible with the role expected of a judicial officer in this province.

I, therefore, recommend that the Lieutenant Governor in Council remove Justice of the Peace Sinai from office in accordance with s. 8 of the *Justices of the Peace Act*.

### COSTS:

This case has clearly been facilitated by the filing of an Agreed Statement of Facts and the calling of only one witness, Lorna Laforest.

Therefore, as recommended by commission counsel, pursuant to s. 12(3.1) of the *Justices of the Peace Act*, I recommend that Justice of the Peace Benjamin Sinai be compensated for all of his costs for legal services incurred in connection with this inquiry.

Dated at Kitchener this 7th day of March 2008.

David George Carr  
Commissioner



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NOTICE OF PUBLIC HEARING  
INTO COMPLAINTS ABOUT THE CONDUCT OF  
HIS WORSHIP JORGE BARROILHET,  
A JUSTICE OF THE PEACE

NOTE: Reasons for Decision from any public hearings are posted on the website of the Justices of the Peace Review Council when released.

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## PUBLIC NOTICE OF HEARING RE: HIS WORSHIP JORGE BARROILHET

### NOTICE OF PUBLIC HEARING INTO COMPLAINTS ABOUT THE CONDUCT OF HIS WORSHIP JORGE BARROILHET, A JUSTICE OF THE PEACE

Pursuant to section 11(15) of the *Justices of the Peace Act*, R.S.O. 1990, C. J.4, the Justices of the Peace Review Council will hold a formal hearing into the conduct of Justice of the Peace Barroilhet of the Ontario Court of Justice. The decision was taken following the investigation of a complaint against Justice of the Peace Barroilhet in accordance with the Justice of the Peace Review Council's complaints process. A three-person complaints committee, consisting of a judge, a justice of the peace, and a member of the public, investigated the complaint and ordered that a formal hearing be held, and reported back to the Review Council.

The Honourable Chief Justice Annemarie E. Bonkalo, Chair of the Review Council, has established a hearing panel from the members of the Council pursuant to section 11.1(1) of the *Justices of the Peace Act* to hear the matter, composed of a judge who shall chair the panel; a justice of the peace; and, a lawyer.

Hearings of the Review Council are normally held in public and the dates and times of the hearings are posted on the Council's website. After concluding its hearing of the matter, pursuant to section 11.1 of the *Justices of the Peace Act*, the hearing panel may dismiss the complaint, with or without a finding that it is unfounded, or if it upholds the complaint, it may decide upon any one of the following sanctions singly or in combination:

- warn the justice of the peace;
- reprimand the justice of the peace;
- order the justice of the peace to apologize to the complainant or to any other person;

- order the justice of the peace to take specified measures such as receiving education or treatment, as a condition of continuing to sit as a justice of the peace;
- suspend the justice of the peace with pay, for any period; or,
- suspend the justice of the peace without pay, but with benefits, for a period up to thirty days.

The Council may also make a recommendation to the Attorney General that the justice of the peace be removed from office. This sanction stands alone and cannot be combined with any other sanction. Under section 11.2(1) of the *Justices of the Peace Act*, a justice of the peace may be removed from office only by order of the Lieutenant Governor in Council.

The public hearing will commence at 9:30 a.m. on June 26, 2008 at the "JPR Arbitration Hearing Centre", Room A, 3rd Floor, 390 Bay Street, Toronto, Ontario. 390 Bay Street is located at the north-west corner of Bay and Richmond Streets (one block south of Queen Street).

Please note that "JPR Arbitration Hearing Centre" does not permit the use of photographic, audio-visual or recording devices on their premises and the Justices of the Peace Review Council will not permit any such devices in the Hearing Room itself.

The hearing will consider whether the conduct summarized below was incompatible with the due execution of Justice of the Peace Barroilhet's duties and has brought the administration of justice into disrepute:

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### PUBLIC NOTICE OF HEARING RE: HIS WORSHIP JORGE BARROILHET

Whether Justice of the Peace Barroilhet had continuing inappropriate interest in, contact with, and involvement with paralegal services including presiding in his capacity as a justice of the peace over matters for defendants who were represented by such paralegal services; and, whether Justice of the Peace Barroilhet had inappropriate involvement in and acted improperly with respect to re-opening and reduction motions, including one where the client was a friend.

Any person who wishes to give evidence at the hearing or who has information he or she believes will be of interest to the hearing or who wishes to bring a preliminary motion is requested to contact Doug Hunt, Q.C., Presenting Counsel, at: Hunt Partners LLP, Telephone 416-943-4868; fax 416-943-1484.

General Contact:  
Marilyn King, Acting Registrar  
(416)327-5672



